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# **A Longitudinal Study of a Cohort of Batterers Arraigned in a Massachusetts District Court 1995 to 2004**

May 2006

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# **A Longitudinal Study of a Cohort of BATTERERS Arraigned at a Massachusetts District Court 1995 to 2004**

## **Executive Summary**

### **INTRODUCTION**

A majority of 342 men arraigned for domestic crimes in a Massachusetts district court in a year spanning 1995-1996 committed a variety of crimes in addition to domestic abuse. Using criminal history records, the researchers examined the criminal activities of these men for the nine years after their index arrest. Twenty years was the median length of the criminal career of men who the police arrested for domestic violence and they had a prior arrest for substance abuse or violence or both. Men who committed domestic crimes, but did not have a prior arrest for substance abuse or violence or both had a median criminal career of 11 years.

The domestic violence literature argues categorically that men continue their domestic crimes unless the police intervene, the victim pursues some other protective social action, or the abuser departs; men do not spontaneously desist from domestic violence.

Court intervention is an important instrument in the process of initiating a man's desistance from domestic crime. Auditors of domestic violence literature conclude, however, that there is only weak evidence that various court-directed domestic violence remedies are effective. Given that most men in the longitudinal study who committed domestic violence were persistently and generally criminal, this is not a surprising conclusion. Remedies designed to contain domestic violence are inadequate against substance abusing, violent men, who make up a majority of the abusers. While 80 percent of the men who committed only domestic violence crimes desisted within one year of their index arrest, only 16 percent of the men who committed domestic violence and other crimes desisted within one year.

Observers of local courts frequently argue that greater consistency in the adjudication of domestic crimes would strengthen the effect of court actions. Consistent adjudication, for many reasons discussed in the longitudinal study, is difficult to achieve even in a model court with a high rate of prosecution, such as the one studied here. Courts are multi-part organizations that

respond to a variety of objectives; domestic violence cases may have as many as 84 different paths through the court system. Despite the complexity of the court system, the longitudinal study did find consistent patterns of court behavior around domestic violence crimes. The identification of consistent patterns, however, still left room for considerable variation in the outcomes.

The study distinguished at least two groups of domestic criminals. The 75 percent of the men in the cohort who had a previous arrest for violence or substance abuse or both and are persistently criminal, and the 25 percent of the cohort men who did not have a previous arrest for violence or substance abuse or both. The study outcome suggests that courts need to reframe their view of domestic abuse committed by men in the first group and sentence them to at least a year in a secure facility to receive intensive habilitation around their dynamic criminogenic attributes. Habilitation should continue when these offenders return to the community. The court should sentence men in the second group in the same manner if they fail to desist. This remediation hypothesis is untested. The next step is to test it by evaluating the domestic violence and other criminal activity of men who have received intensive habilitation in a secure facility.

## **BACKGROUND**

This research examines the complex problem of the longitudinal relationship between a proactive judicial domestic violence program and the desistance of the criminal activities of a cohort of men arrested for domestic violence. A district court that covers an eastern jurisdiction of Massachusetts administered the domestic violence program. The research followed the criminal behavior of 342 men that police originally arrested for domestic violence within the court's jurisdiction between February 1995 and March 1996.<sup>1</sup> Through record reviews, this research followed their criminal behavior until December 2004.

The court was a model court. Prosecutors vigorously pursued domestic violence criminals, dismissing the cases of only a small proportion of the arraigned men and pursuing cases even when the victim was reluctant to pursue it. The Probation Department had specially trained domestic violence probation officers who readily returned offenders to court for violations of probation conditions. The Department drug tested the probationers. The court

readily incarcerated domestic violence offenders who either did not meet the conditions of their initial sentence or continued their abuse. The court regularly assigned convicted batterers to qualified batterer intervention programs. Civil restraining orders were readily obtainable. The maximum length of misdemeanor sentence in Massachusetts is 2.5 years, which provides the possibility of a stronger deterrent than exists in most states. The court represents an effectively administered model court as conceived in the 1990s.

## CHARACTERISTICS OF THE 342 MEN ARRESTED FOR DOMESTIC VIOLENCE

At the time of the initial study<sup>2</sup> the median age of the men was 33; the median age of the victims was 32. Eighty-five percent of the abusers and victims were white. Seventy-two percent of the victims were not married. Seventy-three percent of the index incidents took place in the victims' households, although the majority of victims were not living with the abusers at the time. Twenty-three percent of the cases involved ex-partners — ex-spouses, ex-dating partners, and ex-intimates.

These men were not strangers to the courts. Only 16 percent of the study defendants had no prior criminal history before their index arrest.<sup>3</sup> Criminal and civil records indicate that the vast majority of these men had multiple prior criminal charges filed against them before their arrest on domestic violence charges.

Ten percent of the men had severe records of violence including prior felony convictions and prison sentences for murder, armed robbery, rape, or related offenses. Domestic violence charges are just part of much more extensive and wide-ranging violent criminal histories. Twenty-nine percent had restraining orders filed against them prior to their index arrest. Forty-five percent of these had orders taken out by multiple victims. Table 1 summarizes the prior crimes of these men. They include, among others, domestic violence, drug and alcohol crimes, and property crimes.

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<sup>1</sup> The 1995-1996 findings were published by Eve Buzawa, Gerald Hotaling, Andrew Klein and James Byrne in *Response to Domestic Violence In A Pro-Active Court Setting, Final Report* (March 1999) published by the University of Massachusetts Lowell in Lowell, Massachusetts. The National Institute of Justice supported the study.

<sup>2</sup> The 1995-1996 findings were published by Eve Buzawa, Gerald Hotaling, Andrew Klein and James Byrne in *Response to Domestic Violence In A Pro-Active Court Setting, Final Report* (March 1999) published by the University of Massachusetts Lowell in Lowell, Massachusetts. The National Institute of Justice supported the study.

<sup>3</sup> The "index arrest" is the 1995-1996 arrest in the jurisdiction of the District Court and is the point from which the study measures future and previous arrests.

**Table 1: Crimes prior to entry into the study by percent of defendants**

<b>Crime type:</b>	<b>Domestic violence</b>	<b>Alcohol or drug</b>	<b>Property</b>	<b>Public order</b>	<b>Sex crimes</b>	<b>Major motor vehicle</b>
Percent of men in cohort:	27	58	52	44	7	55

On numerous occasions prior to their index arrest, the court sentenced these men for their criminal activity. (See Table 2) The men, who committed domestic violence crimes prior to their

**Table 2: Court punishment prior to their index arrest by percent of defendants**

<b>Punishment:</b>	<b>Probation for at least one prior sentence</b>	<b>Multiple probationary sentence</b>	<b>Incarcerated at least once</b>	<b>Multiple incarcerations</b>
Percent of men in cohort:	55	37	30	19

index arrest, inflicted a high rate of injury. Ten percent of the victims experienced serious injuries, including broken bones, noses, internal bleeding, lacerations, and loss of consciousness. An additional 27 percent experienced moderate injuries involving bruises, swelling, and joint soreness. According to interviews with victims conducted in the initial study, 70 percent of the victims feared serious injury during the incident.

## **THE LONGITUDINAL STUDY**

This longitudinal study examines the interplay, during the next nine years, between the actions of a district court in eastern Massachusetts and the cohort of criminals arrested for domestic abuse in the initial study. The degree to which a criminal desists from their criminal activities is the result of a number of influences, which the literature review summarizes, and the subsequent analysis explores in terms of the affect of court procedures.

A major pattern found in the study was the large amount of crime committed by these men including their index arrest and after. Forty-one percent of the men committed only domestic abuse crimes; 59 percent committed domestic abuse and other crimes. Among the men that the police rearrested following their index arrest, eighteen percent committed only domestic

abuse crimes, twenty-two percent committed only non-domestic abuse crimes, and sixty percent committed domestic abuse and non-domestic abuse crimes.

In less than six months, the police rearrested forty-seven percent of the men for their next crime. After each arrest, approximately 26 percent of the men desisted from further criminal activity, as measured by an arrest.

Whether a man in the cohort had a prior arrest for violence or substance abuse, or both, affected the length of his criminal career; 20 years was the median length of the criminal careers of violent, substance abusing men. Eleven years was the median length of the criminal career of men who did not have a prior arrest for violence or substance abuse or both. The court's actions help contain the offending of men arrested only for domestic violence. Eighty percent of these men desisted within a year of their index arrest. For men who committed other crimes as well as domestic violence crimes, only 16 percent desisted within a year of their index arrest.

The procedures of a local court are complex. The steps in which a man is involved after he is arrested include his prosecution, his initial sentencing by the court, the final disposition of his case, if he over-steps his initial sentence, and whether he desists from his criminal activity. The time from the initial arraignment to the initial disposition averaged 259 days, the median time was 196 days. The pace at which the court carried out its processes was far different from the pace of the men's criminal activity. Rearrested men were as equally likely to commit a new crime before the court disposed of their previous one as after. This criminal behavior had no discernible effect on the court's sentencing behavior and often worked to the advantage of the criminal insofar as the court disposed of the former case concurrently with the latter. The Court was indifferent to the violation of a restraining order, either in terms of determining guilt or in the court's sanction. Restraining orders, which are civil orders in Massachusetts, played no discernible role in determining the outcome of a criminal abuse case, although a violation carries a maximum penalty of 2.5 years in a county correctional facility. One-third of domestic violence arrests involved violations of restraining orders.

Arresting and prosecuting the men failed to deter those who committed domestic violence as well as other crimes from continuing their criminal activity, either before the court disposed of their case or after the court imposed its sanctions. Ordering men to batterer intervention programs or anger management was the usual court effort to habilitate domestic violence

criminals. Such programs are an inadequate response to men who are domestically violent, substance abusers, who commit additional crimes. The lengthy court procedures and the modest efforts to habilitate these criminals exposed victims and the community to excess levels of risk.

The court procedures do exhibit some consistencies. A multivariate logit model found that the criminal's age at first arrest, an interaction of age at first arrest and an alcohol or drug arrest, and conviction for a prior violent crime characterized men found guilty in contrast to those who had their cases dropped, dismissed, or diverted. For example, if the police first arrest a criminal at age 15, he abused substances, as measured by an alcohol or drug arrest, and had a prior violent crime conviction; the probability of a guilty disposition is 64 percent. If the man is 46 at his first arrest, is not an arrested substance abuser, and has no violent criminal record the probability of a guilty disposition is 8 percent.

The court sentenced the men found guilty to one of two major initial dispositions: probation with or without a suspended sentence; or incarceration, with or without a split sentence. The single variable that distinguishes whether a man guilty of domestic violence is initially sentenced to jail is whether he has previously committed a violent crime for which he has been jailed. If the court issued a guilty verdict, the man has a previous jail sentence and he committed a prior violent crime, his probability of returning to jail is 69 percent. If the court issued a guilty verdict, but the man had either no prior jail sentence or no prior violent crime, his probability of a jail sentence is 46 percent ( $p=0.009$ , odds ratio=2.6). This interaction variable is a reasonable description of the decision process given that violent men appropriately have an elevated probability of incarceration.

The distinction between a court's initial decision and its final disposition of the case is important. An initial decision, such as continuance without a finding, probation, a suspended sentence, or a split sentence is an initial conditional sentence. Violation of the court-imposed conditions can result in the court ordering the offender to jail. This is a final disposition of the case. There can be no more severe sentence of a misdemeanor crime than a term in a county correctional facility without probation. Given an initial conditional disposition, the final disposition is effectively a continuation of the case.

A logit model estimated that the probability of whether the court's final disposition was a jail sentence. The analysis estimated that a jail sentence is the conditional probability of an



initial guilty disposition, conditioned by whether court had previously sentenced the offender to jail. That is, offenders who have a final disposition of jail may have an initial probationary sentence, but demonstrate that they cannot yet stay within the limits of a sentence less than jail. The court decides to contain their behavior by revoking their conditional sentence and returning them to jail.

Men who failed to desist from crime and the police rearrested had early criminal involvement, substance abuse, committed a prior violent crime, and had an inability to stay within the bounds of a conditional judicial penalty, such as probation or a suspended sentence. In contrast, men were less likely to recidivate if they were older at first arrest, married, and remained within the bounds of their conditional sentence. Table 3, based on the logistical multivariate analysis of the offender’s behavior, provides illustrative estimates of the probability of rearrest.

**Table 3: Probability of recidivism based on offender’s behavior**

<b>Age at first arrest</b>	<b>Alcohol/drug arrest and age interaction</b>	<b>Married</b>	<b>Prior Violent crime</b>	<b>Final disposition is jail</b>	<b>Probability of recidivism</b>
19	Yes	No	Yes	Yes	0.99
25	Yes	Yes	No	No	0.57
19	No	Yes	No	No	0.38
46	No	Yes	No	No	0.13

The statistical analysis provides a synoptic view of prosecution, initial and final judicial disposition of the crimes and recidivism of the 342 men. The analysis finds that there is consistency in how the court responded to domestic violence cases. The case outcomes, however, do not perfectly reflect the independent variables. The repeated pattern of court sentencing indicates that although the likelihood of an offender recidivating may be very high, the court, often initially disposed of a rearrested man’s case with a suspended sentence or other probationary sentence.

Finally, while the court’s efforts appeared to be effective with men who committed only domestic violence crimes, the court’s vigorous response to domestic violence with high rates of prosecution, batterer intervention programs, drug testing, special probation officers, and

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deterrence through probation and jail did not stop the criminal activity of men who committed a variety of crimes including domestic violence. The study provides some evidence that the next generation of model program needs an intensive effort to habilitate these men and reduce their violence, their general criminogenic needs, and their abuse of alcohol and drugs, both while they are in a secure facility and in the community following their release. Given the lengthy criminal careers of these men and the likely costs they impose on the criminal justice system, the community, and individuals, such a “new model” approach may provide measurable net benefits.

## Table of Contents

<b>Chapter 1: Introduction to the Research .....</b>	<b>1</b>
<b>BACKGROUND.....</b>	<b>1</b>
<b>DATA SOURCES FOR THE STUDY.....</b>	<b>3</b>
<b>A REVIEW OF EARLIER LITERATURE.....</b>	<b>5</b>
<b>Chapter 2: Offenders and Offenses.....</b>	<b>13</b>
<b>INTRODUCTION.....</b>	<b>13</b>
<b>OFFENDER CHARACTERISTICS.....</b>	<b>13</b>
<i>Exhibit 1: Prior Domestic Violence History.....</i>	<i>17</i>
<i>Exhibit 2: Prior Felony Crimes Against Persons.....</i>	<i>18</i>
<i>Exhibit 3: Repeated arrests.....</i>	<i>20</i>
<b>Chapter 3: Operation of the District Court with Regard to Index Domestic Violence Offenses and Dispositions .....</b>	<b>21</b>
<b>TIME PERIOD.....</b>	<b>21</b>
<b>MAJOR CHARGES.....</b>	<b>21</b>
<i>Table 1: Major domestic violence charges.....</i>	<i>22</i>
<b>TIME TO INITIAL DISPOSITION.....</b>	<b>23</b>
<i>Table 2: Initial dispositions by year.....</i>	<i>24</i>
<b>INITIAL COURT DISPOSITIONS.....</b>	<b>24</b>
<i>Table 3: Initial dispositions .....</i>	<i>26</i>
<b>FINAL COURT DISPOSITIONS.....</b>	<b>27</b>
<i>Table 4: Final dispositions .....</i>	<i>28</i>
<b>OVERLAPPING PROSECUTIONS.....</b>	<b>28</b>
<i>Exhibit 4: Overlapping Charges and Dispositions.....</i>	<i>29</i>
<b>A SUMMARY.....</b>	<b>30</b>
<b>Chapter 4: Analysis of Prosecution, Court Decision, and Court Sentencing of Index Arrest.....</b>	<b>31</b>
<b>INTRODUCTION.....</b>	<b>31</b>
<b>CRIMINAL PROSECUTION AND THE ROLE OF ALCOHOL AND DRUGS.....</b>	<b>31</b>
<i>Table 5: Consequences of substance abuse .....</i>	<i>32</i>
<b>PROSECUTE OR DISMISS; GUILTY OR NOT GUILTY.....</b>	<b>32</b>
<i>Table 6: Prosecution by offender/offense characteristics of domestic violence cases.....</i>	<i>33</i>
<i>Table 6A: An examination of the proximately related variables in Table 6 .....</i>	<i>34</i>
<i>Table 6B: Probability of guilty disposition in domestic violence case.....</i>	<i>35</i>
<b>THE INITIAL COURT SENTENCE.....</b>	<b>35</b>
<i>Table 7: Sentences and offender/offense characteristics.....</i>	<i>36</i>
<b>FINAL COURT SENTENCE.....</b>	<b>37</b>

<b>Chapter 5: Recidivism.....</b>	<b>38</b>
<b>SOME ISSUES OF DEFINITION.....</b>	<b>38</b>
<i>Table 8: Number of domestic violence arrests per defendant.....</i>	<i>39</i>
<b>NEW OFFENSES AFTER THE INDEX OFFENSES.....</b>	<b>40</b>
<i>Table 9: Number of domestic violence and non-domestic violence arrests for each subsequent arrest following the index arrest.....</i>	<i>40</i>
<i>Table 10: Non-domestic violence re-arrests .....</i>	<i>40</i>
<i>Figure 1: Comparison of continuing arrests for men who commit only DV crimes and men who commit DV and other crimes.....</i>	<i>41</i>
<i>Table 11: Probability of recidivism based on logistic behavior .....</i>	<i>42</i>
<b>TIME TO RE-ARREST.....</b>	<b>43</b>
<i>Table 12: Distribution of Rearrest of the Offender Cohort by Time to Next Arrest.....</i>	<i>43</i>
<b>NEW RESTRAINING ORDERS.....</b>	<b>44</b>
<i>Exhibit 5: Multiple arrests.....</i>	<i>44</i>
<i>Exhibit 6: Rearrests came quickly.....</i>	<i>45</i>
<i>Table 13: Breakdown of new restraining order by number of defendants.....</i>	<i>45</i>
<b>VIOLATIONS OF RESTRAINING ORDERS.....</b>	<b>46</b>
<i>Table 14: All Arrests, Domestic Violence, and Restraining Order Violation Arrests.....</i>	<i>46</i>
<b>DESISTANCE FROM CRIME.....</b>	<b>46</b>
<i>Figure 2: Proportion of Cohort Continuing to be Arrested after first arrest.....</i>	<i>47</i>
<i>Figure 3: Proportion of Cohort Continuing to be Arrested 1995-2004 with/without previous violence or substance abuse.....</i>	<i>49</i>
<b>Chapter 6: Conclusions .....</b>	<b>51</b>
<i>Table 15: Sentences of Repeat Domestic Violence Offenders who were initially jailed for the index arrest.....</i>	<i>52</i>
<i>Exhibit 7: Sentencing of Chronic Abuser.....</i>	<i>53</i>
<b>Bibliography.....</b>	<b>56</b>

# **A Longitudinal Study of a Cohort of Batterers Arraigned at a Massachusetts District Court 1995 to 2004**

## **Chapter 1: Introduction to the Research**

### **BACKGROUND**

This research examines the complex problem of the longitudinal relationship between a proactive judicial domestic violence program and the desistance of the criminal activities of a cohort of men arrested for domestic violence. An eastern Massachusetts District Court administered the domestic violence program. The research followed the criminal behavior of 342 men that police originally arrested for domestic violence within the court's jurisdiction between February 1995 and March 1996.<sup>4</sup> Through record reviews, this research followed their criminal behavior until December 2004.

The court vigorously pursued domestic violence criminals, dismissing the cases of only a small proportion of the arraigned men and pursuing cases even when the victim was reluctant to pursue it. The Probation Department had specially trained domestic violence probation officers who readily returned offenders to court for violations of probation conditions. The Department drug tested the probationers. The court readily incarcerated domestic violence offenders who either did not meet the conditions of their initial sentence or continued their abuse. The court assigned convicted batterers to qualified batterer intervention programs or anger management programs. Civil restraining orders were readily obtainable. The maximum length of a misdemeanor sentence in Massachusetts is 2.5 years, which provides the possibility of a stronger deterrent than exists in most states. The court represents an effectively administered pro-active court as conceived in the 1990s.<sup>5</sup>

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<sup>4</sup> The 1995-1996 findings were published by Eve Buzawa, Gerald Hotaling, Andrew Klein and James Byrne in Response to Domestic Violence In A Pro-Active Court Setting, Final Report (March 1999) published by the University of Massachusetts Lowell in Lowell, Massachusetts. The National Institute of Justice supported the study.

<sup>5</sup> The Court's domestic violence program won the Ford Foundation's Innovations in American Government \$100,000 Awards in 1992 and was selected by the Office for Violence Against Women as one of four national training sites for all state Violence Against Women Act STOP administrators in 1995.

Most men the police arrested for domestic violence had earlier arrests and had committed other crimes. Childhood and adolescent experiences do not fully explain adult criminal behaviors; 40 to 50 percent of adult criminals do not have juvenile records. Regardless of when a man begins his criminal acts, desistance from crime is an expected part of his life story. Thus, in a longitudinal study of men who commit domestic violence and other crimes, the primary contribution of a proactive court is its effects on the men's desistance from crime and abuse.

Specifically, a pro-active program has high levels of offender prosecution, even when victims are reluctant to pursue the case, consistent administration of deterrent sentencing, drug testing, behavioral intervention programs, specially trained probation officers, and readily obtainable restraining orders.

The case outcomes for men in the cohort reflect the interplay of the behavior of the pro-active court, and the men's process of desisting from crime. The purpose of this study is to reflect on the effects of the operation of a model judicial domestic violence program, as exemplified by the program initiated at the court in the early 1990s, on the criminal desistance of the men in the cohort.

The study describes the offenders, their domestic violence and other criminal offenses and the response of the Court. It is fundamentally a statistical case study. The Bureau of Justice Assistance (BJA) defines a case study as "a method for learning about a complex instance, based on a comprehensive understanding of that instance, obtained by extensive description and analysis of the instance, taken as a whole and in its context."<sup>6</sup> The evidence in a case study can be qualitative, quantitative or both. This study follows the BJA case study definition.<sup>7</sup> This case study follows several complex steps in the criminal justice process: prosecution, determination of guilt, initial sentencing, final disposition of the case and criminal recidivism.

Although this case study relies on statistical measures, there is no control group; the design is not quasi-experimental. Nevertheless, the study provides insight into the relationship

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<sup>6</sup> Bureau of Justice Assistance, Center for Program Evaluation, [www.ojp.usdoj.gov/BJA/evaluation/glossary](http://www.ojp.usdoj.gov/BJA/evaluation/glossary)

<sup>7</sup> Donald T. Campbell and Julian C. Stanley, Experimental and Quasi-experimental Designs for Research, Rand McNally, 1966, p.6-7 scathingly dismiss case studies for their lack of a control group. Robert K. Yin writes that case studies have a distinctive place in evaluation research. The most important is to *explain* the causal links in real-life interventions that are too complex for the survey or experimental strategies. Case Study Research: Design and Methods, 2d Edition, Swage Publications, 1994, p.15. Robert Yin notes that Campbell later recognized that case studies were not a subset of quasi-experimental designs, but a separate research strategy. Yin ,*op.cit* p.19.

across time between the behavior of the court and the behavior of the criminals. This becomes especially worthwhile given that John Laub and Robert Sampson write, “Conventional wisdom holds that there is little cessation from domestic violence over time.”<sup>8</sup>

The study hypothesizes that within a criminal court process, which includes processing many domestic violence cases, the criminal behavior of the men resulted in consistent court responses. The study defines a consistent response as one that researchers can observe statistically. Similarly, the men in the cohort responded in a manner that was also statistically measurable. Examining the measured behavior of the court and the behavior of the offenders provides some insight into the interrelationship of the criminal justice process and the desistance of men from criminal acts.

A case study outcome is a function of its context. Because of contextual differences, the same study undertaken in a different location with a different cohort of men is likely to have a somewhat different result. For example, the court in this study is proactive with regard to domestic abuse. The same study undertaken in a less active court with different laws is likely to have a different result.

#### **DATA SOURCES FOR THE STUDY**

Researchers in this longitudinal study examined several databases. First, researchers accessed the state’s criminal history file, which contains a complete record of all Massachusetts court arraignments by charge. Consequently, researchers were able to track all defendant arrests that resulted in court arraignments through 2004. The criminal history file also records court action, including disposition of the case. If the defendant is committed to either a county correctional facility or a state prison, the actual period the defendant spent incarcerated is not included, only the correctional sentence imposed by the court. Periods spent under parole supervision are not included. As a result, research can only determine the number of months the court sentenced a defendant to incarceration, not the time actually served. Although former Massachusetts Governor William Weld ordered the state parole board to stop granting parole to

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<sup>8</sup> John H. Laub and Robert J. Sampson, *Understanding Desistance from Crime*, Crime and Justice: Annual Review of Research, University of Chicago, Vol. 27, 2001, p. 31..

domestic violence perpetrators in the mid-1990s, these inmates still qualified for “good time” and related considerations that reduced their time actually served.

The researchers also accessed individual court criminal and civil records manually maintained by court clerk-magistrates. The criminal complaints identify the victim(s) of each charge, the victim’s date of birth and the addresses of the defendant and victim, as well as where the offense occurred. The civil records contained copies of restraining orders issued, including the name and relationship of the petitioner (victim) to the respondent (abuser).

Researchers restricted their search for court restraining orders in the longitudinal study to those filed in the district court. Although there is an automated civil restraining order file, only hard copies stored in individual courthouses are open to researchers. While most of the study defendants, based on new arrests, remained in the court’s jurisdiction, it is likely that some had new restraining orders taken out against them outside the court’s jurisdiction. Measured by subsequent restraining orders, the assessment of new abuse is somewhat low. In this longitudinal study, researchers did not interview crime victims, analyze police reports, or review offender behavior in batterer intervention programs. The actual amount of crime committed by the men in the cohort is likely to be larger than is reported in their criminal history data.

The study analysis relies on cross tabulations, Fisher’s exact test, bivariate and multivariate logistical analysis, and survival analysis. In addition, the study illustrates particular points in the study with brief vignettes of unidentified criminals in the cohort. The analysis focuses on describing the criminal behavior of the men in the cohort that significantly relates to case outcomes. The behavioral descriptions of the criminals are incomplete insofar as the variables all derive from the men’s criminal court and civil court records. Variables, which are part of the criminal record, describe antisocial or prosocial behavioral actions that the criminals have taken and to which the court responded, rather than background descriptive variables such as education and income, which are not readily controlled by the criminal or the court.



## A REVIEW OF EARLIER LITERATURE

Brookoff and his colleagues<sup>9</sup> present the following summary of participant characteristics from a sample of data collected at the scene of police responses to domestic violence calls, (n=64 assailants, 72 victims). Sixty-eight percent of the assaults involved weapons; 15 percent resulted in serious injury; 89 percent of the victims reported previous assaults by the same assailant; 35 percent of these assaults were on a daily basis; 92 percent of the assailants reported using alcohol or drugs on the day of the assault; 44 percent had a history of charges related to violence; 72 percent had an arrest for substance abuse; and children witnessed 85 percent of the assaults.

Since the 1970s, there have been numerous innovations designed to improve the effectiveness of police and court responses to the violence described by Brookoff and his colleagues. Among these innovations are warrantless misdemeanor arrests, primary aggressor identification to lessen the likelihood of dual arrest, no-drop or evidence-based prosecution, batterer intervention programs and intensive, specialized probation supervision as well as easier availability of civil and criminal protection orders, and victim advocacy programs. Edna Erez writes that underlying these legal reforms is an assumption that implementing these policies with regard to police, prosecutors, special courts and sanctions will enhance the system's ability to combat women battering.<sup>10</sup> Unfortunately, Daniel Mears concludes, "Few of the identified interventions enjoy consistent and strong support regarding their effectiveness."<sup>11</sup>

The researchers found that men arrested for domestic violence frequently have criminal records, and that arrest, intense supervision and batterer intervention programs do not deter these men from battering again; the men do not desist. Although the literature is extensive, it contains gaps. Few of these studies are longitudinal;<sup>12</sup> few of them deal with desistance from battering;<sup>13</sup>

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<sup>9</sup> D. Brookoff, et al, *Characteristics of participants in domestic violence: Assessment at the scene of domestic assault*, Journal of the American Medical Association, Vol. 277(17), 1997, 1369-1373.

<sup>10</sup> Erez, Edna, *Domestic Violence and the Criminal Justice System: An Overview*, Online Journal of Issues in Nursing, Vol. 7(1), 2002 [www.nursingworld.org/ojin/topic17/tpe17\\_3.htm](http://www.nursingworld.org/ojin/topic17/tpe17_3.htm).

<sup>11</sup> loc cit. p.128.

<sup>12</sup> There are two longitudinal studies of court ordered batterer intervention treatment. M. Shepard, *Predicting Batterer Recidivism Five Years After Community Intervention*, Journal of Family Violence, Vol.7(3), 1992, p. 167-178, and D.G. Dutton, et al, *Wife Assault Treatment and Criminal Recidivism: An 11-Year Follow-up*. International Journal of Offender Therapy and Comparative Criminology, Vol.41 (1), 1997, p. 9-23. The average length of follow-up in the study is 5.5 years. There is also a six-year study on serial batterers, Adams S. *Serial Batterers*, Probation Research Bulletin, Office of the Commissioner of Probation, Commonwealth of Massachusetts, December 1999.

and still fewer studies examine the general criminality of abusers.<sup>14</sup> One of the difficulties of cross-sectional criminal justice evaluations is that they often fail to take into account where the criminal is in his criminal life. For example, the positive effect of arrest on domestic assault derives, in part, from where the man is in his life-course. A man who is married and employed is likely to desist after the initial arrest, while an unmarried, unemployed man may become more violent; temporal context determines a significant amount of outcome variation.

An unstated premise of short-term research is that the justice system interventions can significantly reduce abuse, for at least a short time, with one dose. One interpretation of Daniel Mears' conclusions is that a single dose of a judicial intervention will not relieve chronic domestic violence. A longitudinal study of the criminal abuse and the court's response may provide some insight into this dosage problem.

A longitudinal review of domestic abuse involves an examination of men's desistance from crime and criminal assault. Criminal justice researchers describe the desistance process qualitatively and quantitatively, but they do not completely understand it. Quantitatively, they define criminal desistance as the rate of offending which declines to the point where it is a "stable rate empirically indistinguishable from zero."<sup>15</sup> John Laub and Robert Sampson in a comprehensive discussion view desistance as part of a "life-course." A life-course perspective

recognizes that lives are embedded and shaped by context; the recognition that the developmental effects of life events are contingent on when they occur in a person's life...; the acknowledgement of intergenerational transmission of social patterns — the notion of linked lives and interdependency; and the view that human agency plays a key role in choice making and constructing one's life course. In short, the major objective of the life-course perspective is to link social history and social structure to the unfolding of human lives. A life-course perspective thus looks to explain variations in crime within individuals over time, regardless of whether one is interested in understanding persistence or desistance.<sup>16</sup>

In a life-course perspective, a person's decisions are the outcome of their psychological makeup operating within a framework of their experiences and current context.

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<sup>13</sup> Jeffrey Fagan, *Cessation of Family Violence: Deterrence and Dissuasion*, Crime and Justice: Annual Research Review, University of Chicago, 1989, p.377-425.

<sup>14</sup> Eighty-five percent had prior arrest records in an East Norfolk, Massachusetts study; 69.4 percent in a Charlotte, North Carolina study; 59 percent in a Minneapolis arrest study; and 74 percent in an Indianapolis prosecution study.

<sup>15</sup> Shawn D. Bushway et al., *An Empirical Framework for Studying Desistance as a Process*, Criminology, Vol. 39, No.2, 2001, p.500.

<sup>16</sup> Laub and Sampson, op.cit. p.47

Laub and Sampson attribute desistance to a small number of correlates: a stable marriage, stable work, a transformation of identity, and aging.<sup>17</sup> They note the association between substance abuse and domestic violence,<sup>18</sup> although they do not understand the causal connection. A reduction in substance abuse may be a collateral outcome of the criminal desistance process.

The authors readily admit that these correlates and other similar explanations have a “post hoc” feel. It is difficult to distinguish a “transformation of identity” from transformational outcomes such as a stable marriage, steady employment, and aging. Criminals have a low rate of marriage. Women avoid marrying men with criminal records, just as employers are reluctant to hire them. Marriage implies that a transformative process is ongoing. Marriage, however, is as much an outcome of the process of criminal desistance as it is an institution to reinforce it. Marriage implies a willingness to drop bad associates and invest in alternative uses of leisure time. Marriage is likely to be proximately associated or collinear with having a job, reinterpretation of a man’s identity and aging, rather than being an independent variable.

The interpretation of aging as an independent variable in the desistance process is equally difficult. Aging is a proxy variable for many cumulative changes. It signals the inevitable decline in energy, as well as the accumulated investment in marriage, a steady job, new associates, and new social contexts that modify the life-course. The desisting criminal learns that earnings from honest employment are greater than the earnings from crime; they become more risk averse, especially with regard to the expense and punishment that results from court involvement. A marriage may provide an important source of income for a man with a criminal record.

Neal Shover cautions, however, against an overly sunny view of desistance. Many men who desist from crime after incarceration do so in only the narrowest, most bureaucratic meaning of non-recidivism. Most live menial or derelict lives and many die prematurely from alcoholism, drug use, and suicide. Although the police no longer arrest them, many remain involved in a violent subculture.<sup>19</sup>

The role of the courts in desistance from domestic violence is critical. Jeffrey Fagan, in a comprehensive article on the cessation of domestic violence, states categorically, “There are no studies that document “natural” or spontaneous desistance [from family violence] without

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<sup>17</sup> Ibid, p.1

<sup>18</sup> See Raul Caetano, John Schaffer, Carol Cunradi, *Alcohol-related Intimate Partner Violence Among White, Black, and Hispanic Couples in the United States*, Alcohol research and Health, Vol.25No.1, 2001, p.58-65.

intervention by the victim or as a result of some form of sanction or treatment.”<sup>20</sup> He continues, the few studies that analyze desistance typically attribute desistance in domestic violence to [social or legal] interventions, the departure of the abuser, or desistance that result from victim strategies. Professor Fagan writes,

It appears that desistance often begins with provocation from an external source, often a victim initiated event, usually involving the threat of legal or social sanctions that raise the cost of battering. Only then do the socio-psychological processes of desistance begin for the batterer.<sup>21</sup>

Desistance from battering requires the same transformation of identity, flexibility, and development of new social networks that men (and women) require in the process of cessation from other types of crime.

The intervention of the court is one of the many contexts that this cohort of men experience during the nine years covered by the study. Unfortunately, the study data are restricted to the criminal and civil records of the men and their victims. The study researchers did not interview the criminals or their victims. The data are sufficient to trace only the parts of a man’s life that intersect with the judicial system and a clerk’s records of his criminal acts. Nevertheless, the examination of these records and court’s adjudication process provide useful insight into the interplay across nine years of the men’s criminal behavior and the court’s response.

Jeffrey Fagan argues that aversive court actions can have a positive effect on desistance and urges consistent responses to battering.<sup>22</sup> Court experiences for batterers, however, may not be particularly aversive or consistent. Judges and prosecutors dismiss many cases. The police may arrest a man for domestic assault or other crimes several times before a prosecutor decides to prosecute and a judge decides to convict and punish the man for his criminal acts. Multiple arrests without sanctions may inure the criminal to court processes, affirm his feeling of impunity, and reinforce his criminal behavior.

While inconsistency may reinforce criminal behavior, the consistent application of aversive consequences may be difficult to achieve in misdemeanor cases. Prosecutors may dismiss many cases or not pursue cases in which the victim recants. Not all judges in a

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<sup>19</sup> Neal Shover, *Great Pretenders: Pursuits, Pursuits and Careers of Persistent thieves*, Boulder Colorado: Westview Press, 1996, p.146.

<sup>20</sup> Jeffrey Fagan, *Cessation of Family Violence: Deterrence and Dissuasion*, *Crime and Justice: Annual Research Review*, University of Chicago, 1989, p.380.

<sup>21</sup> Fagan, op.cit. p. 392.

jurisdiction have the experience, training, or inclination to adjudicate effectively domestic violence cases. Prosecution and probation usually invest few investigative resources in these cases and prosecutors generally dispose of most cases with plea bargains.

If desistance is a process, and the court invests few resources in a case, the court will not have sufficient evidence to determine whether the batterer possesses the self-control to stay within the boundaries of a community sentence that does not involve significant jail time. The court consequently may revisit many of its initial dispositions when the criminal strays beyond the boundaries of the court order.

Significant time in jail is a seriously aversive outcome. Western and Beckett found that the negative effects of youth incarceration on adult employment exceed the negative effects of dropping out of high school or living in an area of high unemployment.<sup>23</sup> Incarceration, without effective habilitative treatment is a risky tactic for society, because it makes it more difficult for men to connect later with the institutions and social networks that support desistance. This realization by judges may provide an additional explanation for the probationary sentence for many men that the court would otherwise sentence to jail. Commentators on desistance argue that intensive habilitative programs of cognitive restructuring administered during incarceration that address the dynamic attributes of offenders and their circumstances can lead to positive change and are more successful than programs that focus on static background factors, or deterrence alone.<sup>24</sup>

As previously noted, criminologists routinely view marriage and family formation as indicators of progress toward criminal desistance. Wife-beating manifestly indicates that the husband has not reached the maturation<sup>25</sup> required for desistance. This lack of maturation signals the likelihood of continued assaults and involvement in other crimes. The implications of repetitious arrests for battering should be particularly concerning to the courts, given that battering is an adult crime that occurs in the years in which criminologists expect to observe desistance. Similarly, repetitious police arrests for the battering of unmarried, adult intimate partners signals a serious lack of maturation and should be concerning to the justice system.

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<sup>22</sup> loc.cit. p.416.

<sup>23</sup> Bruce Western and Katherine Beckett, *How Unregulated is the US Labor Market? The Penal System as a Labor Market Institution*, *American Journal of Sociology*, Vol. 104, p. 1049.

<sup>24</sup> See for example, *A Study on the Habilitation of Chronic Offenders in a Massachusetts House of Corrections: Barnstable County*, BOTEC Analysis Corporation, supported by National Institute of Justice, December 2003.

<sup>25</sup> The authors use the term maturation here in a generic sense and include other theories about desistance processes.

Shawn Bushway and his colleagues, use a criminal cohort developed by John Laub, Daniel Nagin, and Robert Sampson to reach conclusions that are relevant to the criminal desistance observed in this study.<sup>26</sup> Professor Bushway and his colleagues use a semiparametric trajectory model to divide the cohort into four groups. In two groups, the men are persistent criminals. The third group desists at a steady but moderate rate. By age 32 their expect rate of arrest is once every five years. The fourth group reached a desistance level by age 32 where their expected rate of arrest is once every 50 years. The data for the cohort ends at age 32. John Laub and his colleagues found that members of both desistance groups have “higher quality marriages at age 32 than do the persistors.”<sup>27</sup>

The median age is 33 for the cohort of batterers arrested in the study district. Clearly, these men have poor marital or intimate partner relationships. Men in the study cohort are characteristically persistent insofar as half of the cohort is still criminal at an age when desisting criminals usually reach a very low rate of arrest.

Nancy Shields and Christine Hanneke divided batterers into those who were generally violent and those who only engage in domestic violence.<sup>28</sup> They found that men who confined their violence to battering had higher social status; they were more likely to have drug and alcohol problems; as children, they had greater exposure to violence; and they participated less in violent subcultures. Despite these differences, none of the men within the two groups spontaneously halted their violence.

A hypothesis derived from this discussion is that intimate partner battering is characteristic of persistent criminal behavior, and as Jeffrey Fagan suggests, batterers will initiate desistance only after significant court sanctions. Manifestly, desistance requires serious legal and social pressure. Because desistance is a process, the court is likely to prosecute slowly desisting abusers or persistent abusers multiple times for multiple crimes.

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<sup>26</sup> Shawn Bushway, et al., op cit. p.504-506. Unfortunately, there appear to be several errors in the text description of the study outcomes. The results reported here are based on the data in Figure 2, p.504 of the article..

<sup>27</sup>Shawn Bushway, op cit, p. 506.

<sup>13</sup>.Nancy Shields and Christine Hanneke, *Patterns of Family and Non-Family Violence: An Approach to the study of Violent Husbands*,” Paper presented at the annual meeting of the American Sociological Association, 1981.

<sup>14</sup> Daniel P. Mears, Matthew J. Carlson, George W. Holden, Susan D. Harris, *Reducing Domestic Violence Revictimization: The Effects of Individual and Contextual Factors and Types of Legal Intervention*, Journal of Interpersonal Violence, Vol. 16, No.12 December 2001, p.1265

The argument for the importance of aversive court actions as an ingredient in fostering desistance rests partially on the costs and stress that the court processes impose. Court processes and sanctions can significantly offset the apparent value to men of abuse and crime. These costs include lawyer fees, bail costs, fees for batterer intervention programs, or other treatment, court fees and any court judgments for damages. In addition, there are the costs and stress of time away from work, job loss, or time away from searching for work caused by court proceedings, probation meetings, hearings and possible jail time. These may not be the only costs. If the batterer is married or children are involved, the wife or intimate partner may try to impose additional costs by threatening to separate, take the children, and sue for child support in family court. These victim actions may trigger further violence and another cycle of costs.

The imposition of these aversive costs by the court are likely to require repeated applications, especially for impulsive and persistent criminals, before the batterer initiates change by investing in desistance through a transformation of identity, re-interpretations of previous behavior, and the substitution of a prosocial network for a subculture of violence. Without this investment, it is likely that the man's criminal behavior will reoccur after a period of remission either with the same victim or with another.

Professor Fagan writes that there is a debate as to whether family violence is a special case. Family violence has been segregated from both criminology and violence research; researchers continue to view it as an idiosyncratic crime and concentrate on gender specific motivations.<sup>29</sup> They strongly characterize their discussions of domestic violence and its cessation by focusing solely on domestic violence and ignoring batterer participation in other criminal activity. The result is research that focuses on the unique causes of domestic violence and from these causes, researchers develop unique solutions, overlooking batterer participation in multiple criminal activities, and the desistance process, which involves stopping a variety of criminal behaviors.

This review of the literature suggests several thoughts.

- Researchers often consider intimate partner violence as an idiosyncratic and gender specific crime.
- Research evaluations focused on short-term results have not yet consistently demonstrated the effectiveness of interventions designed to respond to intimate partner violence.

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<sup>29</sup> Jeffrey Fagan, op. cit. p. 414.

- An alternative hypothesis is that intimate partner violence is not idiosyncratic. Rather these men engage in a variety of criminal acts that include domestic violence.
- A criminal often marks his desistance from crime with positive steps toward maturation, such as marriage, steady employment, and a reinterpretation of his identity. This is especially true of men who in their early thirties reach very low levels of criminal activity. Some men, however, fail to mature, desist slowly, or persist in their criminal acts.
- To desist from intimate partner abuse men need to adopt the same prosocial habits as other men who leave criminal behavior behind.
- The median age of men who abuse their intimate partners is approximately 33; half of the abusive men are 33 or older. This suggests that they are persistent or slowly desisting criminals.
- Abusive men, because they persist in their criminal behavior, will not desist without strong legal and social pressures. Consistent and repeated court sanctioning of intimate abuse may initiate desistance.
- Consistent court sanctions combined with intensive rehabilitative programs that focus on the offender's dynamic attributes that contribute to their criminality may lead to positive changes.

The examination of this cohort of men arrested for domestic violence looks at their range of criminal behaviors. It tabulates the frequency, distribution, and continuance of their criminal activity. Finally, it reviews the responses of the court to these criminals. In doing so, the study examines the evidence for the hypothesis that intimate partner batterers share the characteristics of persistent criminals and the need for the courts to respond repeatedly with sanctions and effective rehabilitative programs that focus on the dynamic factors in the men's general criminal behavior.



## Chapter 2: Offenders and Offenses

### INTRODUCTION

It is important to understand the composition of the cohort. The cohort is composed of a cross section of criminals who the police arrested within the Court's jurisdiction for domestic abuse in 1995-1996. If domestic abuse was a disorder distributed generally among men, the composition of the cohort of arrested abusers would be different from what it is. Far fewer arrested, abusive men would have prior criminal records; criminal arrest is not an expected part of a man's life-course. Many of the arrested men, however, do have previous criminal arrests; they look like a male criminal population.

### OFFENDER CHARACTERISTICS

The following is a profile of the offenders and their offenses:

- **Age**

At the time of the initial study the men in the cohort ranged in age from 17 to 66 with a median age of 33. The victims ranged were 16 to 73; the median age was 32.

- **Race/Ethnicity**

Reflecting the demographics of Massachusetts' South Shore, eighty-five percent of the abusers and victims were white. However, given that non-whites comprised only six percent of the South Shore population in the early 1990s, non-whites represented a disproportionate number of abusers and victims.

- **Marital Status and Abuse**

Most of the victims were not married to their abusers at the time of their index arrest.<sup>30</sup> Seventy-two percent of the victims were not married.<sup>31</sup> Seventy-three percent of the incidents took place in the victims' households, although the majority of victims were not living with the abusers at the time of the index study incident. Specifically, twenty-three percent of the cases involved ex-partners—ex-spouses, ex-dating partners, and ex-intimates. In addition, according to

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<sup>30</sup> The "index arrest" is the 1995-1996 arrest in the jurisdiction of the District Court, which is the point from which the study measures all future and previous arrests.

<sup>31</sup> Based on the age of the victim, one of the female victims was probably the mother, not the wife of the abuser. Marital status was determined by last name of the victim. All of the other matching victims were too young to be the mother of their abuser.

a sample of victims (n=118) in the baseline study, thirty-six percent were also victims of child abuse. All of the abusers in the initial study were male and their victims were female.

▪ **Prior criminal and abuse history of the sample<sup>32</sup>**

The defendants' criminal records and civil restraining order records reveal that the vast majority of the study abusers were not strangers to the court system. Most had records of multiple prior criminal charges filed against them before the police arrested them for their index domestic violence crime. A minority had prior civil restraining orders filed against them.

▪ **Prior Civil Restraining Orders**

Massachusetts created a central registry of civil restraining orders in September 1992. As a result, it can be determined that 29 percent of the study sample had at least one order taken out against them between that date and the initial study period through 1995/1996. Intimates or dating partners, family, or household members requested the orders. Approximately one-third of the defendants with prior orders had more than one taken out against them. Forty-five percent had orders taken out by victims other than the victims in the index incident. A dozen had two or three different victims secure orders against them prior to 1995/1996.

▪ **Prior Criminal Records:**

The state's central probation file provided all criminal history cases that resulted in a court arraignment except if the court found the person not guilty or the case was sealed or expunged.

The police may arrest a person on multiple charges. The court arraigns the person on each charge. Therefore, one incident may result in several criminal charges. At the time of the initial study, typically, each arrest resulted in slightly less than two charges. The coded charge is the most serious one when there are multiple charges lodged against the defendant. The only exception is credit card fraud. In these cases, there may be dozens and dozens of individual counts. In this study, one charge includes multiple fraud counts.

Prior charges are classified as "crimes against persons," "property," or "public order," "major motor vehicle offenses, excluding drunk driving," "sex offenses," and "alcohol and drug offenses," including drunk driving.

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<sup>32</sup> This excludes defendants whose records were not obtained for the extended research study.

In addition, the database lists the number of charges that resulted in sentences that involved either “probation supervision” or “incarceration.” Because sentences may be served concurrently (i.e. simultaneously), the number of probation and jail sentences does not necessarily equal the number of separate sentences actually served or periods of probationary supervision. In summarizing prior criminal records, sentences of incarceration also include sentences imposed after the revocation of a probationary sentence, even though the initial sentence did not include jail.

Finally, if the offense occurred before the study offense, but the court did not sentence the defendant until after the study offense, the sentence is not included in the tabulation under “prior” record. While the incident was prior to the study incident, the resulting sentence was not.

Only sixteen percent of the study defendants had no prior criminal history before their index domestic violence arrest. The average study defendant had 11 prior criminal complaints on their record; the median was five. Fifty-five percent of the defendants had been under probation supervision twice for prior charges. The range of prior probationary, suspended, or split sentences ranged from one to 28. Twenty-nine percent had served an average of two sentences in a county correctional facility or prison. The range was from one to 42 sentences of incarceration.

- **Age at first offense**

The median age at first offense was nineteen. Specific juvenile records were only available for those who had juvenile records after the 1980s when the state’s juvenile records were centralized. If the juvenile accumulated a record before then, the defendant’s criminal history only noted that the defendant had a juvenile record, i.e. an arrest before age seventeen. A conservative estimate of the age of first arrest is sixteen where the offender’s age is not noted. As a result, the actual age of first arrest for the entire sample was probably lower than that reported here. Where the entire juvenile record was available, the age of first arrest was as low as age 7. Twenty-five percent of the study defendants had a juvenile arrest record.

In short, a quarter of the men in the cohort began their criminal careers as juveniles; more than half had probation supervision and almost all had prior adult arrest records. A little less than a third were incarcerated as adults.

- **Age of first domestic violence arrest**

Domestic violence is not generally a first crime. Among the 94 defendants with known prior domestic violence arrests, the median age of first arrest was 18; the median age for their first domestic violence arrest was 28. The age range of the first prior known domestic violence arrest was 17 to 57 years. At the median, the first known domestic violence arrest preceded the index arrest by 4.3 years. Among the study defendants with a known history of at least one prior domestic violence arrest, their abuse history stretched over a number of years. They, however, began their domestic violence criminal activity years after they began their general criminal history although the men may have been abusive as juveniles and young adults, the likelihood that young victims would report their victimization to police was less. Among index defendants who had no prior domestic violence arrests, their index domestic violence arrest followed their first criminal arrest by a median 9.3 years.

- **Prior Crimes against Persons and Domestic Violence:**

Fifty-six percent had at least one crime against persons, generally termed a violent crime. These crimes ranged from simple assault to murder. At least 90, or almost half of those with violent crimes, had prior records of domestic violence. Although Massachusetts records do not typically reveal the identity of victims nor does the state have a specific domestic violence statute, some courts in the 1980s and earlier indicated “wife” on an assault and battery record. In other instances, the offense was a violation of a restraining order, which by definition constitutes a domestic violence charge. In a handful of other cases, before these offenses were decriminalized, the defendants’ records indicated charges for “illegitimacy and non-support,” which are included as domestic violence offenses.

Exhibit 1 provides an example of a prior chronic abuser as determined by his prior criminal history. Despite a lack of a domestic violence statute, chronic histories of domestic abuse are readily apparent from the offenders’ criminal record.

Other crimes against persons may have been domestic but that cannot be determined on the face of the record. However, based on prior civil records, almost 30 percent had prior restraining orders filed against them. Combining prior criminal and civil histories, 44 percent of the study sample had prior court recorded histories of domestic violence.

It is also apparent that more than a few of the defendants had severe records of violence. Approximately 10 percent of the defendants had prior felony convictions for murder, armed robbery, rape or related offenses and received state prison sentences. Examples are included in Exhibit 2. As indicated by these examples, although the charges that brought most of the defendants into the study were misdemeanors, their prior records also included felonies. In addition to those cases highlighted in Exhibit 2, at least two others also had prior records for homicides.

**Exhibit 1: Prior Domestic Violence History**

• **Offender 01** was first arrested at age 20 for major motor vehicle offenses, following the next year by drug possession. In 1986, the court arraigned him for nonsupport of a child. While that case was pending, the court arraigned him in April 1987 for annoying telephone calls and threats. The victim is unnamed. However, two years later, in March 1989, he was back in court for violating a restraining order. Police arrested him in April, and three times in May, for new violations of a restraining order. The court sentenced him to probation on the second violation while the first one was still pending. He defaulted on the third and fourth charges. The police arrested him on the warrant and the court sentenced him to six months in jail in June 1989.

The court arraigned him for another restraining order violation in February 1993 and sentenced him in March to a split sentence of two years; six committed the balance suspended for 18 months. Subsequently, in October 1993, the court revoked the balance of the suspended part of the sentence and ordered him to jail for 18 months.

His initial study domestic violence offense resulted from a July 1995 case of a violation of a restraining order taken out by his wife.

• **Offender 02** was first charged with violation of a restraining order in 1988 in Brockton, Massachusetts; the court dismissed it. The court ordered him to jail in 1989 for assaulting a police officer after an arrest for drunk driving. The police charged him with violating another protective order in 1991 in Plymouth; the court dismissed it. The police charged him twice more in Plymouth in 1992 for more order violations; the court dismissed them. The police charged him two more times that year with order violations in Quincy, including assault and battery charge of the victim and the second with a compliant of intimidation and threats. On both sets of charges, the court sentenced him to a split sentence of nine months served in the house of correction and subsequently 21 more months when he violated his probation the following year. The court revoked his probation because the police charged him with yet another order violation in 1993. On that violation, the court sentenced him to 30 months house of correction concurrent. Upon release, the police arrested him in November 1995 for the study domestic violence charge, another restraining order violation against his wife

While the cases in Exhibits 1 and 2 do not typify the majority of the sample, they represent a significant minority of study defendants and illustrate how the domestic violence charges are just part of much more extensive and wide-ranging violent criminal histories. Very few of the defendants had prior records of crimes of domestic violence only. It is also clear why many victims feared for their lives, even though the abusers did not injure them.

## Exhibit 2: Prior Felony Crimes Against Persons

- **Offender 03** The court sentenced this offender to 12 to 15 years in state prison in 1981 for six counts of murder and arson. Upon release, in 1993, Quincy police arrested him for threats, assault and battery, assault and battery with a dangerous weapon and violation of a restraining order. The court dismissed these cases the next month. In April 1995, police arrested him for assault and battery with a dangerous weapon against his girlfriend.

- **Offender 04** The court first incarcerated him in 1954 for assault and battery. The court sentenced him to state prison for 7 to 10 years for robbery in 1956. In 1969, the police charged him with assault and battery with a dangerous weapon against his wife. The court did not find probable cause on that charge, but did fine him for an accompanying disorderly offense. In 1983, the court returned him to state prison for 3 to 5 years, for possession of a firearm, assault and battery with a dangerous weapon and assault to kill. Upon his release, the police arrested him for violation of a restraining order in 1995 taken out by his wife.

- **Offender 05** The police charged him with murder in 1986, but the prosecutor dropped the charges. The Superior Court imprisoned him for two years in 1987 for robbery and assault and battery with a dangerous weapon. That same year the police charged him with several counts of kidnapping, assault to rape, armed assault in a dwelling, and one count of rape. In 1988, the court sentenced him 20 years imprisonment. The court returned him to prison for 8 to 12 years for in 1993 for two incidents of armed assault and robbery. Before his imprisonment, the police arrested him in Dorchester, a Boston neighborhood, for “assault and battery family abuse.” The court dismissed the charge in 1992. While incarcerated, in 1994, the Department of Corrections charged him and the court convicted him of several counts of assault and battery on a corrections officer. The court sentenced him to 2.5 years incarceration after his current sentence. The court imposed the sentence in July 1998, after the police charged him with a restraining order violation in July 1995 taken out by an intimate partner. The court sentenced him to five months in a county correctional facility for that offense in February 1996.

- **Offender 06** The prosecutor charged the offender with non-support of his family in 1969. That same year the police charged him with murder and armed robbery. The prosecutor reduced the murder charge to manslaughter in 1970 and the court imprisoned him. The record does not indicate the period of imprisonment. In 1972, the federal court sentenced him for 12 years for bank robbery. The Superior Court imprisoned him in 1984 for 12 to 25 years for assault to kill, carrying a shotgun and related charges. The police charged him with escape and the court convicted him in 1985. Upon his release, the police arrested him for major motor vehicle offenses, drunk driving, disorderly persons, possession of cocaine and in August 1995, the initial study domestic violence offenses, included assault and batteries with dangerous weapons, a telephone, a knife, and a table, and two counts of assault and battery, and threats.

- **Prior Drug and Alcohol Crimes**

Fifty-eight percent of the study sample had prior records of alcohol and drug crimes. Most of the drug crimes were possession of controlled substances. Drunk driving was the most common alcohol crime. The number of offenses ranged from one to eighteen. Previous research,

as well as this study, finds a relationship between alcohol and drug abuse and domestic violence, and reabuse<sup>33</sup>

- **Prior Crimes against Property**

Fifty-two percent of the sample had prior crimes against property, ranging from one to ten. The offenses varied from larceny by check to malicious destruction of property and burglary.

- **Prior Crimes against Public Order**

Forty-four percent had crimes against public order, mostly disorderly conduct. Many of these crimes are alcohol related. Massachusetts decriminalized public drunkenness; prior to that, the charge was “drunk and disorderly.”

- **Prior Sex Crimes**

Two dozen of the sample had prior histories of sex offenses, ranging from indecent assault and battery to rape.

- **Major Motor Vehicle Crimes**

Fifty-five percent had prior major motor vehicle offenses, ranging from attaching plates, operating to endanger, no compulsory insurance to driving after license suspension.

- **Prior Probationary Supervision and Sentences of Incarceration**

Because of at least one prior conviction, 55 percent of the men in the cohort had prior probation supervision. The court placed 68 percent of them under probationary supervision two or more times, with the most being 28 times. The defendants placed on probation with a suspended sentence, or a split sentence either were guilty on the evidence or admitted guilt.

Thirty percent of the men previously received jail sentences. Sixty-two percent of these men received four or more such sentences; the most was 42. Although each sentence of incarceration is separate, the actual sentences served often overlapped or were concurrent. Exhibit 3 provides an illustration. The State incarcerated the defendant for twenty different charges, but only thirteen constituted separate periods of incarceration. A review of the dates imposed and length of each sentence indicates that many of them overlapped.

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<sup>33</sup> See Klein (2004), op. cit. 37.

### Exhibit 3: Repeated arrests

<p><b>Offender 07</b> The court sentenced him to jail 20 times. Below are the dates of when he actually went to jail. He served overlapping sentences concurrently.</p> <ol style="list-style-type: none"><li>1. 1979: 30 days, probation, then in 1980, he received another five months because of a probation revocation (same sentence, served two periods of incarceration).</li><li>2. 1979: 30 days</li><li>3. 1981: 12 months</li><li>4. 1981: Also sentenced to probation, but in 1984, probation revoked, received 24 months</li><li>5. 1983: Probation, but revoked on 1983, received 30 days.</li><li>6. 1983: 24 months</li><li>7. 1984: 24 months</li><li>8. 1984: 3 months</li><li>9. 1984: 24 months</li><li>10. 1986 10 days</li><li>11. 1986 10 days</li><li>12. 1991 180 days</li><li>13. 1993 6 months</li><li>14. 1993 10 days, also 5 months, probation then revoked on 1996 received 12 months</li><li>15. 1996: domestic violence, 14 months</li></ol>
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In summary, the criminal records accumulated by these men prior to their index arrest suggest persistent criminality. At the time of their index arrest, their median age was 32; an age when criminologists expect most men to have largely abandoned crime. Twenty-eight was the median age for their first domestic violence arrest. Only twenty-eight percent of the men were married; a low rate of marriage.<sup>34</sup> Eighty-four percent of the men had a prior criminal record. The police arrested fifty-six percent for a prior violent crime. Fifty-eight percent of the men had arrests for alcohol abuse, drug abuse or both. Thirty percent of the men had prior incarcerations.

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<sup>34</sup> Forty-seven percent is the rate of marriage for men living in the Northeast who are between the ages of 25-34. *United States Census, 2000*



## Chapter 3: Operation of the District Court with Regard to Index Domestic Violence Offenses and Dispositions

### TIME PERIOD

The initial study arraignments or default removals for untried domestic violence cases occurred from February 1, 1995 to March 1, 1996 in the court's jurisdiction. The court handles all arraignments for both felonies and misdemeanors following an arrest by police or issuance of a criminal complaint by the clerk magistrate.<sup>35</sup> The record search for this cohort of men ended in December 2004.

### MAJOR CHARGES

In the index arrest, the most common major domestic violence charge filed against the men was "assault and battery," a misdemeanor punishable by a sentence of up to 2.5 years in a county correctional facility. Because misdemeanor sentences in Massachusetts are more than twice as long as sentences typically provided for misdemeanants across the country, the State prosecutes domestic violence charges and almost all criminal charges as misdemeanors; only one percent of the charges were felonies.<sup>36</sup>

Table 1 provides a detailed breakdown of the most serious domestic violence charge lodged against each man. Acts of violence or attempted violence was the charge for 70 percent of the men. This is typical of domestic violence arrests around the country. The overwhelming majority of charges are for misdemeanor physical assaults.<sup>37</sup>

Police charged twenty-six percent of the defendants with violating previously issued civil restraining orders, including five violations that also involved physical assaults against the victim. Violations of civil restraining orders are misdemeanors also carrying possible sentences of 2.5 years in a county correctional facility. According to police reports, the offender was under

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<sup>35</sup> However, if the defendant is arrested following an indictment brought by the Grand Jury, the initial felony arraignment will be in the county's Superior Court that handles felonies.

<sup>36</sup> The percent of felony domestic violence charges ranges widely across the country from a low of 2.1 percent in West Virginia in 1998 to a high of 21.1 percent in Florida in 2002, See Klein, A. (2004). The Criminal Justice Response to Domestic Violence. Belmont, CA: Thomson/Wadsworth, 14.

<sup>37</sup> See Klein, A. (2004).

the influence of alcohol or drugs in about 36 percent of the incidents. This is higher than that recorded in some states, but lower than that found in at least one.<sup>38</sup> Another person witnessed forty-six percent of the incidents; a child was the witness in fifty-three percent of these cases.<sup>39</sup>

Table 1: Major domestic violence charges (n=342)

Charge	Number	Percent
Assault & Battery (A & B)	181	53
A & B Dangerous Weapon	41	12
Assault Dangerous Weapon	7	2
A & B and Violation of Protective Order	5	1.5
Rape*	3	1
Assault (no battery)	3	1
Attempted Murder**	1	<1
<b>Total Assaults</b>	<b>241</b>	<b>70.5</b>
Violation Protective Order	83	24
Threats	13	4
Stalking**	2	<1
No complaint Issued/unknown	3	1
<b>Total Other Charges</b>	<b>101</b>	<b>29.5</b>

\* Must be prosecuted as a felony; \*\* May be prosecuted as a felony

Ten percent of the victims experienced serious injuries, including broken bones, broken noses, internal bleeding, lacerations, and loss of consciousness. An additional 27 percent experienced moderate injuries involving bruises, swelling, and joint soreness. According to interviews with victims conducted during the initial study, 70 percent feared serious injury during in the incident, even if they were not. Although states track victim injury differently, many similarly report that most victims of domestic violence experienced “no injuries,” including 55 percent in Michigan in 2000 to 71 percent in Rhode Island in 2001. Other states, including Nevada and Iowa in 2001 report the majority of victims experienced “minor” injuries.<sup>40</sup>

<sup>38</sup> North Dakota reported 49 percent of domestic violence arrests in 2001 involved perpetrator alcohol/drug use, but other states that reported rates ranged from 20 percent in Nevada and Iowa in 2001 to 30 percent in New Jersey in 2001, see, Klein (2004), op. cit. 34.

<sup>39</sup> This appears consistent with at least one other state that reports child witness rates. Rhode Island reported 27.5 percent of children “saw” the domestic violence incident according to police reports in 2001. A larger percent, 30.7 percent “heard” the incident. Other states report a higher percentage of children were “present” in the households where incidents occurred, ranging in 62 percent of the cases reported in Nevada in 2001 to 32 percent in Iowa that year, see, Klein (2004), op. cit. 55.

<sup>40</sup> See Klein (2004). Op. cit. 17.

The abuser in 16 percent of the incidents used a weapon. The reported use of weapons in domestic violence incidents varies widely across the country ranging from 55 percent in Georgia in 2000 to a low of 5 percent in New Jersey in 2001.<sup>41</sup>

#### TIME TO INITIAL DISPOSITION

Between May 11, 1995 and June 3, 1999, almost all of the cases were initially resolved. Six of the subsequent study cases defaulted and the cases were not resolved during the subsequent study period through December 2004. The time from the initial arraignment to the initial disposition averaged 259 days, the median time was 196 days. The range was zero for four cases disposed of at arraignment to 1,383 days.

The median time excludes cases where the defendant:

1. requested a “First Instance Jury Trial;”
2. the case was bound over to the Grand Jury for imposition of felony charges; or
3. the defendant defaulted on scheduled hearings.

Vestiges of the Massachusetts *de novo* misdemeanor trial system continue to exist in Massachusetts, allowing misdemeanants to request jury trials any time before the case is disposed by a judge. Most defendants who opt for first instance jury trials generally engage in plea-bargaining to resolve the case. However, the request generally engenders long delays in case resolution because jury sessions generally have long backlogs.

Four defendants had felony charges. This requires a probable cause hearing in the District Court, unless within forty-five days the case goes to a Grand Jury. The Grand Jury must ultimately meet and hand down an indictment before the case goes to trial in the Superior Court. Notwithstanding this process, these cases may subsequently be plea-bargained back to a misdemeanor charge. One of the four felony defendants did so and the case stayed in District Court. Of the defendants who delayed dispositions because of defaults, at least one defaulted four times before his case was resolved. In general, it took the court half a year to hear the cases of study defendants and impose an initial disposition.

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<sup>41</sup> Klein (2004). Op. cit. 18.

Table 2: Initial dispositions by year (342)

Year of Initial Disposition	Number of Cases	Percent
1995	97	28
1996	196	57
1997	30	9
1998	8	2
1999	5	1
No Disposition	6	2

## INITIAL COURT DISPOSITIONS

In Massachusetts, almost all arrests result in criminal charges filed in court unlike other jurisdictions where the review is more formal and prosecutors screen the case before the court files charges.<sup>42</sup> One of the main reasons for this is that in Massachusetts police prosecutors, employed by the police departments within the District Court’s jurisdiction file charges and initially prosecute for arraignment. After arraignment, a civilian prosecutor employed by the County District Attorney takes up the case. A specially assigned domestic violence Assistant District Attorney generally prosecuted the case after arraignment. Most of the prosecuted index defendants admitted their guilt before a judge. A handful did this at arraignment, but most did so at a subsequent scheduled hearing. After a finding or an admission of guilt, judges usually immediately end the case and sentence the defendant. For the sentencing of misdemeanants in Massachusetts, judges neither mandated nor request, probation pre-sentence investigation reports.

The initial disposition may not be the “final” disposition. Many dispositions are conditional upon the defendant’s good behavior for a number of months, usually up to a year. The disposition is subject to change if the defendant’s behavior is not in conformity with the court’s directive. In other cases, the initial disposition constitutes the final disposition. The following all constitute final dispositions:

- the defendant is found “not guilty;”
- the case is dismissed in court at the request of the Commonwealth and with the consent of the defendant (DRCCD);

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<sup>42</sup> For example, in San Diego which boasts “no drop” prosecution of domestic violence, City prosecutors file on only 70 percent of arrests made, see, Klein (2004), op. cit. 133.

- the case is dropped by the prosecutor,
- the court finds the defendant guilty and commits him to a county correctional facility (for misdemeanants) or state prison (for felonies).

Thirty-two percent of the index arrest dispositions imposed also constituted final dispositions. The remaining dispositions were conditional. Table 3 lists both. Prosecutors dropped or asked for dismissal in 28 percent of the cases. Prosecutors filed charges against all of the defendants except one; this constitutes a very high prosecution rate compared to most jurisdictions around the country. It is equal to the prosecution rate in four “model” jurisdictions that adopted “no-drop” prosecution policies.<sup>43</sup> This means that prosecuted study cases were representative of the arrested population with little screening by local prosecutors. Many jurisdictions routinely fail to prosecute a majority of domestic violence arrests.<sup>44</sup>

The Court initially jailed more than 12 percent of the defendants, split equally between those sentenced to straight jail terms and those sentenced to split sentences (jail along with subsequent suspended sentences). The median length of initial straight jail sentences imposed was one year. The median length for a split sentence was six months.

Conditional initial sentences included cases that were:

- continued without a finding;
- placed on pre-trial probation;
- probationary, suspended, or split sentences;
- filed or fined.

The sentences “continued without a finding” and “pre-trial probation” cases are both forms of “in-court diversion.” In the former, the defendant is required to admit to sufficient facts of guilt but the court agrees not to impose a guilty finding, thus saving the defendant’s record if the defendant remains arrest-free for a designated period, generally one year. Pre-trial probation is similar except the defendant is not required to admit to sufficient facts of guilt. The court’s probation department monitors defendants who are “continued without a finding” or placed on “pre-trial probation,” to determine if they remain out of trouble and meet any other court-imposed conditions. These conditions may include completion of a batterer intervention program. Probation officers return defendants to court for further sentencing in cases continued without a finding or for trial in cases on pre-trial probation if the defendant fails to remain out of

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<sup>43</sup> Smith, B. et. al. (2001).

<sup>44</sup> Klein, A. (2004).

trouble. The court’s Probation Department rigorously monitored these cases and routinely brought them forward for alleged violations.

**Table 3: Initial dispositions (342)**

<b>Dispositions</b>	<b>Number</b>	<b>Percent</b>
(Final)		
Not prosecuted	62	19
County correctional facility or Prison	21	6
Dropped at the request of the Commonwealth	34	10
Not Guilty	9	3
(Conditional)*		
Continued Without a Finding	85	25
Suspended Sentence	60	17
Probationary Sentence	24	7
Split Sentence	26	6
Pre-trial Probation	10	3
Filed or Fined	4	1

\*Additionally, four study defendants’ cases were not disposed of because they were on arrest warrants for failing to show in court and three others were bound over to the grand jury for possible felony prosecutions. The later seven cases represent less than two percent of the total study cases.

Probationary, suspended, or split sentences are also conditional upon the defendants’ good behavior and compliance with specific conditions that the court may impose. The court’s probation officers with specialized domestic violence training supervised the men with conditional domestic violence sentences. The specific type of disposition mattered only if the defendant subsequently failed to abide by conditions and had his initial sentence revoked by the court. Upon revocation, those with straight probationary sentences could be sentenced up to 2.5 years in a county correctional facility; those with suspended sentenced could be incarcerated up to the length of the suspended sentence, and those with split sentenced could be incarcerated for the suspended part of their initial split sentence.

The majority of the defendants placed under probation supervision were ordered to complete a 50 week batterer intervention program, meet weekly with his probation officer, at least for the first three months of supervision (it could then be reduced to biweekly or monthly), and maintain abstinence from alcohol and illicit drugs, monitored through random biweekly

urine testing conducted by probation. No contact with victims was a probation condition if the victim had a civil restraining order against the defendant.

Filed or fined cases could also legally be brought back to court for non-payment or upon the court's motion, however, typically, these cases are not monitored and none was brought back to court. The same defendant could have multiple dispositions. For example, a defendant may start with a continuance without a finding or pretrial probation. He then is re-arrested and the court may impose a guilty finding. The defendant then receives a post-adjudicatory probationary sentence. If he violates that too, the court may then impose a suspended sentence. If he continues to violate, the court can then impose a split sentence. Upon release from incarceration, the court terminates the case, if he complies with his supervision. If not, the court may jail the defendant and revoke the suspended part of the sentence again, constituting the final disposition of the case.

#### **FINAL COURT DISPOSITIONS**

Final dispositions vary depending upon the initial dispositions. If defendants are in compliance for the length of their continuance, the court dismisses cases that were initially "continued without a finding." This result allows a defendant to avoid a conviction. The court dismissed 65 of the 85 cases continued without a finding, with no guilty findings entered on the defendants' records. The court incarcerated nine, including one who received a split sentence. Eight received probation, which they subsequently successfully completed. Two had warrants issued against them and were not arrested during the initial or subsequent research period. The court reviewed one case with a guilty finding and filed the case.

The court dismisses the case if a defendant abides by the terms of his pretrial probation. Of the ten study defendants initially released on pretrial probation, seven eventually had their charges dismissed. This means they do not have records of conviction. There was a lack of evidence that they committed the initial charges. The court brought forward one defendant and placed him on probation. The court terminated that case, prosecutors dropped another, and one defaulted without subsequent rearrest.

The court terminates the case if the defendant complies with his probationary supervision. Of the hundred and ten cases released under probation supervision (with a

probationary, suspended or split sentence), the court terminated 57 cases and discharged the offenders from probation supervision.

The court revoked probation for fifty-three men and incarcerated them, including sixteen who had already served jail time as part of their initial split sentence. The median sentence for those incarcerated because of a probation revocation was ten months. The four filed or fined cases were unchanged.

The grand jury reviewed the cases of three men. It dismissed one, in another, the court sentenced the defendant to eight years in prison on a felony conviction, and the court sentenced the third man to a split sentence that the court terminated after he served his time and successfully completed his probationary period.

Table 4: Final dispositions (342):

<b>Disposition</b>	<b>Number</b>	<b>Percent</b>
Not guilty	9	3
Dropped at the request of the Commonwealth	17	5
Not prosecuted	63	19
Filed/Fined	5	1
Dismissed	90	26
Incarcerated	84	25
Probationary Period Terminated	66	19
Warrant	8*	2

\*This includes two additional study defendants who committed new offenses after the initial disposition but before final disposition of the index study charges.

## OVERLAPPING PROSECUTIONS

When describing the index domestic violence offenses, prior charges or subsequent offenses are not always straightforward. There is often a considerable delay between the initial court arraignment, the initial disposition, and the final disposition. In the interim, the same defendant is likely to commit additional offenses in different jurisdictions, some of which may be resolved before the prior accumulated charges. In court, prosecutors may drop some charges because the defendant admits to and accepts sentences on unrelated charges or because the defendant is already sentenced for other charges that may have originated previously or subsequently. The examples contained in Exhibit 4 illustrate the point. Forty-four of the study



#### Exhibit 4: Overlapping Charges and Dispositions

• **Offender 08** The District Court arraigned him for Assault to Kill in 1994, a year before the index study arrest. While that was still pending, the Court arraigned him almost a year later in 1995 for threats and assault and battery against a female intimate partner. Later in 1995, the court bound over both the 1994 case and the two 1995 cases to the grand jury for indictment. While all three sets of charges were still pending, the court arraigned the offender for violating a restraining order in 1996. Eleven days later the Norfolk Superior Court arraigned him for Assault and Battery, Assault with Attempt to Murder. Five months later in 1996, the court prosecutor dropped the Violation of Restraining Order charge. The prosecutor filed the same charges in Norfolk Superior in 1996. Finally, in 1997 in Norfolk Superior Court, all of the cases arising from the incidents of 1994, 1995 and 1996 were resolved. The prosecutor did not pursue the Assault and Battery, the Assault with Attempted Murder charges and the Violation of Restraining Order.

• **Offender 09** His first arrests for domestic violence were also his initial study arrests in 1995. The district Court arraigned him for two counts of Assault with a Dangerous Weapon, a Motor Vehicle, and one count of Assault and Battery with a Dangerous Weapon, unspecified, and Stalking involving a female intimate. The court continued the cases for hearing until 1996. At that time, the defendant opted for a first instance jury trial and the court put the case over until 1997. In 1996, the same victim took out a restraining order against the offender.

While these cases were pending, Stoughton District Court arraigned him, with threatening, stalking and assault with a dangerous weapon a different victim in 1996. The Stoughton prosecutor dropped these cases a month later. The District Court arraigned the defendant again in 1996 for violating a restraining order, intimidation of a witness and threatening bodily harm to his original victim. The court continued these cases until 1997. At that time, he again requested a first instance jury trial. The court continued the cases until later in 1997. Four months later in 1997, the District Court prosecutor dropped the original charges. In 1997, five months later, the District Court resolved the second set on the same day the court arraigned him for another violation of the restraining order. The court continued without a finding the violation of the restraining order and threats. The court dismissed the intimidation complaint and filed the second violation of the restraining order.

• **Offender 10** The police arrested this offender on the study charge in 1995 for violation of a restraining order, trespassing, and assault with a dangerous weapon, a knife. By the time this case the court initially disposed of the case in 1995, the police returned him to court for six more sets of charges:

- 1995 – threats, assault with a dangerous weapon and violation of a restraining order;
- 1995 – trespassing and violation of a restraining order;
- 1995 – threats;
- 1995 – assault and battery;
- 1995 – operating after license suspension;
- 1995 – violation of a restraining order.

The court initially disposed of all six sets of cases in 1995 when the court sentenced him to a split sentence, including six months in jail followed by a year and a half suspended. The court finally disposed the case by sentencing him to the remaining year and half incarceration because of a probation revocation in 1996.

defendants had multiple charges pending in court for offenses committed prior to the time of their index domestic violence charge. In other words, in addition to the study domestic violence charge(s) they already had open domestic violence charge(s) pending or the police arrested them for another domestic violence charge(s) before the study charge(s) were resolved.

## A SUMMARY

The lesson of this chapter is clear. Court processes are complex and varied. A simplified model suggests that in a domestic violence case there may be as many as 84 possible paths through the process. For example, assume two possible charges, assault, or other domestic violence charge. The court can dismiss or not dismiss the case. The court has approximately five sanctions for initially adjudicated cases, varying from a fine to jail. Approximately, three more outcomes are possible. The offender completes his sentence or if he violates his sentence, the court may jail the offender or gives him a probationary sentence. The offender then completes either his sentence or the court sentences to jail the men with probationary sentences.<sup>45</sup>

Not all the paths are equally likely. The court will dismiss a number of cases; many men will successfully complete their initial sentence. The court will sentence many violent offenders directly to jail without a split sentence. Persistent criminals, however, can be expected to violate their community sentences and return to court repeatedly.

Absent from this simple model are complexities such as court imposed treatment conditions, concurrent charges and technical violations of probation. Regardless of the path the case follows, it involves negotiating a variety of concerns expressed by the involved parties, their allegations, and the evidence. In addition, this simple model does not account for the variety of motivations that drive the participating parties.

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<sup>45</sup>The number of paths can be calculated as  $2 \times 2 + 2 \times 1 \times 5 + 2 \times 1 \times 5 \times 3 + 2 \times 1 \times 5 \times 2 \times 2 = 84$

## Chapter 4: Analysis of Prosecution, Court Decision, and Court Sentencing of Index Arrest

### INTRODUCTION

The earlier literature review on desistance emphasized the effects of a steady job, marriage, aging, and a man's reinterpretation of his identity. The discussion in this chapter looks at the correlates of marriage, aging, and a man's age at first arrest on the adjudication of repeat domestic violence and other crimes.

The criminal history records do not have employment information or other direct evidence of a transformation of identity. The data does contain, however, evidence on the men's substance abuse as documented by their arrests for alcohol and drug crimes. Although researchers do not understand the causal relationship between criminal abuse, other crimes, and substance abuse, it is likely that cessation of drug and alcohol abuse is a collateral outcome of criminal desistance.

### CRIMINAL PROSECUTION AND THE ROLE OF ALCOHOL AND DRUGS

Substance abuse is an important underlying problem correlated with criminal behavior. The probability is high that a criminal initially arrested at an early age will have a drug or alcohol arrest on his criminal record. As the age of first arrest increases, the probability of a drug or alcohol arrest declines. If the age of first arrest is between age 14 and 17 the probability of an alcohol or drug arrest for a man later arrested for domestic violence is 0.70; for a first arrest between age 25 and 30 the probability is 0.55; between the ages of 30 and 35 the probability is 0.40. The probability that a man arrested for domestic violence will have an alcohol or drug arrest declines as the age at first arrest increases. ( $p=0.00$ , odds ratio 0.925)

An arrest for drug or alcohol abuse is an indicator of continuing substance abuse, and this abuse is associated with an increased likelihood of a woman requesting a restraining order ( $p=0.008$ , odds ratio 2.13), the commission of a prior violent crime ( $p=0.00$ , odds ratio 2.61), and being later sentenced to jail ( $p=0.00$ , odds ratio 3.55). Using substance abuse arrests as a measure undoubtedly understates the amount of abuse by active criminals

Table 5: Consequences of substance abuse (n=342)

<b>Relationship between alcohol/drug arrest and selected outcomes</b>	<b>Probability of the outcome with no alcohol/drug arrest</b>	<b>Probability of the outcome with alcohol/drug arrest</b>
Issuance of restraining order	0.14	0.25
Arrest for a violent crime	0.42	0.65
Sentenced to jail	0.12	0.33

Although substance abuse is not the sole cause of criminally abusive acts, it is an important contributor. Caetano, Schafer and Cunradi found that 30 to 40 percent of the men who perpetuated violence against their partners were drinking at the time of the event.<sup>46</sup> These authors also found that male-to-female partner violence were two to four times higher for men with alcohol problems than for men without. The authors caution that other characteristics of individuals besides their drinking and presence of alcohol-related problems, also contribute to the occurrence of IVP. Income level, cohabitation of unmarried partners, unemployment, an impulsive personality, relationship length, violent victimization as a child, attitudinal factors toward violence can increase the risk of IVP. That is, alcohol may be a marker that is useful for identifying a population that has an increased risk for violence<sup>47</sup>

#### **PROSECUTE OR DISMISS; GUILTY OR NOT GUILTY**

The court's domestic violence prosecutors based their assessment of a defendant's risk of repeat domestic violence on their age and prior record. Those defendants who were older and had fewer prior criminal incidents were more likely to have their cases dropped by prosecutors, dismissed in court on a prosecutor's motion or have their cases diverted. This included cases continued without a finding, filed, and placed under pretrial probation in contemplation of a dismissal. As noted earlier, only 28 percent of the defendants had their charges dropped by prosecutors or dismissed in court.

Unlike other studies of domestic violence prosecution, the court's prosecutors actively prosecuted men charged with domestic violence.<sup>48</sup> They pursued defendants who began their

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<sup>46</sup> Raul Caetano, John Schafer, Carol Cunradi, *Alcohol-Related Intimate Partner Violence Among White, Black, and Hispanic Couples in the United States*, *Alcohol Research and Health*, Vol.25, No.1, 2001, p.58.

<sup>47</sup> Caetano, et al, op cit. p.64.

<sup>48</sup> Studies in Milwaukee, Toledo, Ohio all found the majority of domestic violence cases were dropped or dismissed by prosecutors and judges, see Klein, A. (2004).

careers as juveniles and had more criminal and domestic violence incidents. The court was significantly more likely to judge these men guilty. Table 6 examines bivariate relationships between several variables for the cohort of 342 arrested men who the court dismissed, diverted, or found guilty. Cases excluded from the Table are those not initially decided because the man defaulted and the court issued a warrant or the court sent the case to a Grand Jury.

As is evident from Table 6, none of the variables distinguished between dropped or diverted cases. Guilty dispositions are significantly more likely when the man has a criminal history marked by a prior crime or a prior judicial sanction, other than a restraining order. The court was less likely to judge married men guilty of abuse.

As reasonably expected, several variables in Table 6 are proximately related or collinear. These include prior crimes, prior jail, prior DV crimes, and prior restraining order. (See Table 6A) A multivariate logit model clarifies the differences between men who the court judged guilty and those cases the court disposed without probation, a suspended sentence, a split sentence, or jail. Specifically, age at first arrest, an interaction between age at first arrest and alcohol or drug abuse as measured by an arrest, and previous conviction of a violent crime distinguish importantly between a guilty verdict (1) and a case that was dismissed or is diverted (0).

**Table 6: Prosecution by offender/offense characteristics of domestic violence cases (n=333)**

Column	Percent dismissed/ dropped n=101	Percent court diversion n=99	Percent guilty disposition =133	P-values for Fisher's exact test P=0.05	
				A vs. B	A vs. C
Married	34.7	37.4	19.5	n.s	0.01
Prior crime (domestic or other)	69.3	76.8	98.5	n.s.	0.00
Prior violent crime	48.5	38.4	72.9	n.s	0.00
Prior jail	17.8	12.1	49.6	n.s	0.00
Prior probation	45.5	36.4	77.4	n.s	0.00
Prior restraining order	26.7	19.2	36.8	n.s	n.s
Prior DV crimes	20.8	20.0	38.3	n.s	0.00

**Table 6A: An examination of the proximately related variables in Table 6 (N=333)**

<b>Variable</b>	<b>P-value</b>	<b>Odds Ratio</b>	<b>Coefficient sign</b>
Violent crimes and prior crime	0.00	1.15	+
Violent crimes and jail	0.00	7.55	+
Prior DV and probation	0.00	3.98	+
Prior DV and violent crime	0.00	26.5	+
Prior restraining order and prior jail	0.00.	3.11	+

**Coefficients and Standard Errors for Multivariate Logit Model Estimating a Guilty Disposition**

<i>Variable</i>	<i>Coeff</i>	<i>StdErr</i>	<i>p</i>	<i>Variable name</i>
1	0.0399	0.0116	0.0006	Interaction of alcohol or drugs and age at first arrest
2	-0.0577	0.0160	0.0003	age at first arrest
3	0.7758	0.2582	0.0027	prior violent crime

**Odds Ratios and 95 percent Confidence Intervals for Multivariate Logit Model of a Guilty Disposition**

<i>Variable</i>	<i>Odds Ratio</i>	<i>Low</i>	<i>High</i>	<i>Variable name</i>
1	1.0407	1.0174	1.0646	Interaction alcohol/drugs and age of first arrest
2	0.9440	0.9148	0.9740	age of first arrest
3	2.1723	1.3096	3.6034	prior violent crime

The interpretation of the model is straightforward. The negative sign of the coefficient for “age at first arrest” indicates that men initially arrested at an older age are likely to have a minimal criminal record. These defendants receive lesser sanctions. However, age at first arrest and an alcohol or drug arrest contribute positively to the likelihood of a guilty verdict. The odds ratio swung from 0.94 for age at first arrest without a substance abuse arrest to 1.04 when age of first arrest co-occurred with a substance abuse arrest. Marriage, although it is significant in the bivariate relationship, loses its importance in the multivariate one, although the direction of the effect is to reduce the likelihood of a guilty verdict. This result might not hold in other jurisdictions in which prosecutors do not pursue evidence-based prosecutions. The district court prosecutors vigorously pursued cases in which women were reluctant to pursue the case or recanted. In addition, marital status was not known at the time of each arrest incident.

Table 6B provides some illustrative probabilities of a guilty verdict based on the multivariate model. The court was likely to find guilty men who the police first arrested when

they were young, who previously committed violent crimes, and who had an arrest for drugs or alcohol. In contrast, an older man with a minimal record has only a small risk of a guilty disposition.

Table 6B: Probability of guilty disposition in domestic violence case (n=333)

Age at first arrest	Interaction of age at first arrest and drugs/alcohol	Prior violent crime conviction	Probability of guilty disposition
15	yes	yes	0.64
24	no	no	0.24
46	no	no	0.08

## THE INITIAL COURT SENTENCE

If a man admitted his guilt in court or the court determined his guilt on the evidence, the court imposed either probation with or without a suspended sentence; or incarceration with or without a split sentence.

Table 7 indicates that offender or offense characteristics have limited effects on distinguishing between these two categories of initial sentence. Prior incidents of probation, violent crime, and domestic violence were not important in deciding between a suspended sentence and incarceration.

Proximally related or collinear variables are “prior restraining order” and “prior jail.” Victims of men who commit violent crimes are likely to request a civil restraining order from a court, and violent men are very likely to violate them subsequently. The odds ratio of a “prior restraining order” and “prior jail” is 3.16, (p-value = 0.00.) That is, the bivariate relationship between prior restraining order and incarceration reflects the underlying violence that caused the request for and the granting of the order. If there is no prior sentence of jail, the probability of a prior restraining order is 22 percent; if there was prior jail the probability is 47 percent.

The single variable in Table 7 that distinguishes whether a man guilty of domestic violence will go to jail is whether the court previously sentenced him to jail. More specifically, if the court issued a guilty sentence, and he has a previous jail sentence and he committed a prior violent crime, his probability of returning to jail is 69 percent. If the court issued a guilty

sentence, but he has either no prior jail sentence or no prior violent crime, his probability of a jail sentence is 46 percent ( $p=0.009$ , odds ratio=2.6). The interaction variable is not significantly different from the effect of the variable “prior jail,” but it is a better description of the process given that violent men appropriately have an elevated probability of incarceration.

Table 7: Sentences and offender/offense characteristics

<b>Offender or Offense Characteristic</b>	<b>Percent probation/suspended N=84</b>	<b>Percent incarcerated/ Split N=49</b>	<b>P-values for Fisher’s exact test P=0.05</b>
	Column A	Column B	A vs. B
Married	21.4	16.3	n.s
Prior Crime (domestic and other)	98.9	98.0	n.s.
Prior Violence	69.1	79.6	n.s.
Prior Jail	39.3	67.3	0.00
Prior Probation	73.8	83.7	n.s.
Prior restraining order	22.6	40.8	0.03
Prior DV Crimes	32.1	46.9	n.s.

The sentencing outcomes provide some insight as to why restraining orders appear to have little effect.<sup>49</sup> Specifically, victims, based on their knowledge of the perpetrator’s prior criminal history or their threatening experiences with these men request restraining orders from the court. The restraining order, a civil order in Massachusetts, is no more effective against a man’s continued violence than other previous actions of the court. In fact, 35 percent of the domestic violence rearrests were because of restraining order violations. Violation of a restraining order carries a maximum sentence of 2.5 years in a county correctional facility, as do other domestic abuse crimes. The court in adjudicating the recidivist case is aware of the man’s record of violence and the court’s previous responses to it. Within this process, the court is, at the margin, indifferent to a restraining order violation in light of the man’s previous behavioral response to criminal sanctions imposed by the court. That is, a restraining order violation, a criminal act, is not a significant variable in determining whether the court finds a man guilty, diverts the case, or dismisses it. Neither is a restraining order significant in determining the sanction the court imposes.

<sup>49</sup> Daniel Mears, Matthew Carlson, George Holden and Susan Harris, *Reducing Domestic Violence Revictimization: The Effects of Individual and Contextual Factors and Types of Legal Intervention*, Journal of Interpersonal Violence, Vol. 16(no. 12) December 2001, 1260-1283 find that in their study protective orders did not prevent re-abuse..



The sentences imposed on men whose cases had a guilty disposition were generally unrelated to the variables associated with the case disposition. This is not surprising. A man's violent behavior and an earlier decision by the court that jail was required to contain this behavior importantly determined whether the offender returns to jail.

## FINAL COURT SENTENCE

Cases that initially concluded with a court disposition of continuation without a finding, probation, probation with a suspended sentence, or a split sentence may result in a jail term if the Court determines that the initial sentence has not controlled the violent behavior. Fifty-five percent of the men eligible for a more serious final disposition received one.

Given that the initial guilty disposition may be conditional, the final disposition may be essentially a continuation of the case. A multivariate logit examination of whether the final disposition is jail finds that it is a function of the probability of an initial guilty disposition. A low probability of a guilty disposition, although the court concluded the man was guilty, importantly determined whether the court sentenced the man to jail. An additional variable is whether the man had a previous jail sentence. Clearly, the more likely an initial guilty disposition, the more likely that jail is the final or initial disposition.

As noted earlier, a prior jail sentence in the multivariate logit analysis is not a significant variable in the determination of the initial guilty disposition, although a prior violent crime, such as domestic violence, is important. This is reasonable. The court should not determine current guilt on the basis of a prior sentence. When a man's violence continues and the court revokes his initial conditional sentence, and he has a previous jail sentence, the court is likely to return the man to jail as the only judicial means of containing his behavior.

### Coefficients and Standard Errors of a Logit Model of the Final Court Sentence

<i>Variable</i>	<i>Coeff.</i>	<i>StdErr</i>	<i>p</i>	<i>Variable name</i>
1	4.6476	1.0874	0.0000	probability of initial disposition of guilt
2	0.8699	0.3130	0.0055	prior sentence to jail.

### Odds Ratios and 95 percent Confidence Intervals of the Logit model of the Final Court Sentence

<i>Variable</i>	<i>Odds Ratio</i>	<i>Low</i>	<i>High</i>	<i>Variable name</i>
1	104.3291	12.3828	879.0053	probability of initial guilty disposition
2	2.3866	1.2922	4.4079	prior jail sentence

## Chapter 5: Recidivism

### NEW OFFENSES AFTER THE INDEX OFFENSES—SOME ISSUES OF DEFINITION

The majority of men committed new offenses after their index domestic violence offense. New offenses included all arrests that resulted in court arraignments after the index domestic violence arraignment. It was not always clear whether the new offenses were domestic violence crimes. The classifications for these new offenses are:

“Known Domestic Violence;”

“Probable Domestic Violence;”

“Non-Domestic Violence.”

Researchers confirmed the “known” domestic violence crimes by reviewing the paper criminal complaints in various court vaults. While Massachusetts does not have a separate crime of “domestic violence” or “domestic assault” or designate the relationship of the victim in the charge, the criminal complaint lists the complaining witness and the addresses of suspects and victims and place of the offense. Researchers matched the name of the complaining witness with that of the study victim. If they matched, the complaint was determined to be domestic violence. If the victim’s name did not match but was a female living at the same address as the alleged suspect and her age was within fifteen years<sup>50</sup> of the suspects, the crime was determined to be domestic violence. Finally, if the victim was female with a different address than the suspect but the crime occurred in either the suspect’s or the victim’s residence and the ages were proximate (within fifteen years), the crime was determined to be domestic violence.

It is possible that some of some of the above cases will have included non-intimate partners of the defendant, including female relatives or family members. It is also possible that cases were excluded involving male partners although the police arrested all of the men initially for crimes against female partners. Additionally, some of the excluded cases may have involved male relatives.

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<sup>50</sup> Age limits were included in order to insure that assaults against a defendant’s mother was not confused with an intimate partner assault.

A crime was listed as “probable domestic violence” if the subsequent arrest was for a crime against persons and the person was not specified as a “police officer or public servant” or other person who was obviously not an intimate partner of the suspect, including male victims. In addition, crimes against persons were excluded if accompanying charges indicated the crime took place in the context of a robbery or some other offense usually unrelated to typical domestic violence crimes and/or involved multiple victims and/or codefendants not typically associated with domestic violence. Although researchers were not able to confirm the relationships in these offenses due to their inability to access the specific complaints,<sup>51</sup> there are several reasons to believe these cases constitute domestic violence.

First, the majority of defendants with “probable domestic violence offenses” also had “known” subsequent domestic violence offenses. Sixty-three defendants with subsequent known domestic violence offenses also had “probable domestic violence offenses.” Second, only thirty-eight had subsequent “probable” domestic violence offense(s) only. However, nineteen of these defendants also had at least one subsequent restraining order taken out against them. In short, all but 19 of the defendants determined to have had subsequent “probable” domestic violence arrests had other court records confirming continued intimate partner or family abuse activity.

**Table 8: Number of domestic violence arrests per defendant**

<b>Subsequent Domestic Violence Arrests per Defendant</b>	<b>Number Defendants</b>
0	98
1	72
2	32
3	27
4	17
5	14
6	6
7	2
8	2
422	270

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<sup>51</sup> Some complaints were missing from courts or failed to include necessary information, or more often were unavailable to researchers because they were located too far away across the state to view reach or were placed in storage, as the specific court vault was too small to maintain complaints from the year of the new arrest.

## NEW OFFENSES AFTER THE INDEX OFFENSES

Subsequent to their index arraignment, the police rearrested seventy-one percent of the men at least once over the next nine years. Thirty-eight percent of the new arrests were for domestic violence; sixty-two percent of the arrests were for other crimes. (See Table 9)

**Table 9: Number of domestic violence and non-domestic violence arrests for each subsequent arrest following the index arrest**

Subsequent Arrest	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>	13 <sup>th</sup>	Total
Total DV Arrests	109	81	68	51	28	22	25	16	10	3	4	2	3	422
Non-DV arrests	135	111	85	73	63	56	33	33	28	27	18	17	11	90
Total New Arrests	244	192	153	124	91	78	58	49	38	30	22	19	14	1,112

Including their index arrest in 1995/1996, the police arrested forty-one percent of the men for domestic violence crimes only. During the subsequent nine years, the police rearrested 18 percent of the men solely for domestic violence crimes; the police arrested 82 percent for other crimes as well as domestic violence crimes. Table 10 indicates the distribution of the other crimes.

**Table 10: Non-domestic violence re-arrests**

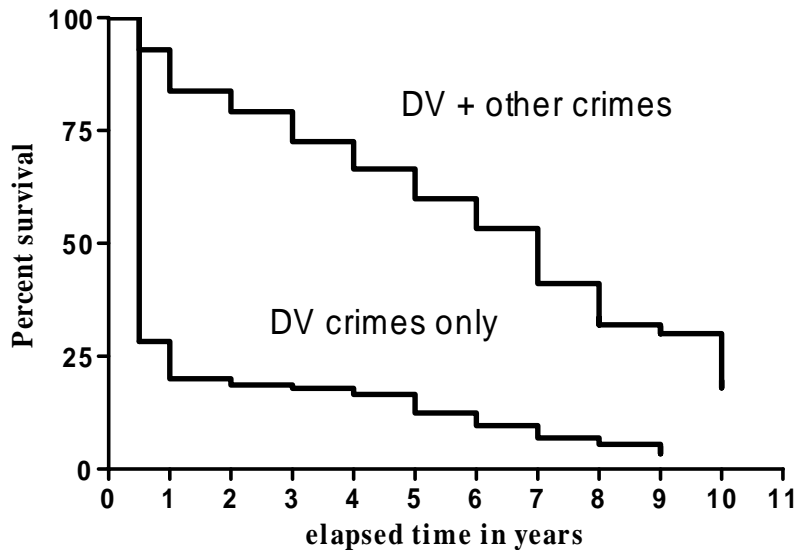
Offense	Percent of Arrests
Major Motor Vehicle	21
Property	28
Drugs/Alcohol	35
Person (Not DV)	7
Public Order	7
Sex	1

The survival curve (Figure 1, p.41) indicates the sharp drop-off in arrests for men who committed only DV crimes. Within one year of their index arrest, the police continued to arrest approximately 20 percent of the men. In contrast, the police continued to arrest approximately 84 percent of the men who continued to commit other crimes as well as domestic violence crimes. The hazard ratio of men who committed only domestic violence crimes to those generally

criminal is 0.351. The men who committed only domestic violence crimes, but did not commit other crimes desisted more quickly than men who were generally criminal.

Figure 1

**Comparison of continuing arrests for men who commit only DV crimes and men who commit DV and other crimes**



A logistic analysis indicates some of the differences between men who the police rearrested and those who desisted from crime. Multiple characteristics mark the men who the police rearrested. Early criminal involvement, substance abuse, commission of a prior violent crime, and an inability to stay within the bounds of an initial court penalty, such as probation or a suspended sentence, marked the recidivists. On the other hand, the police were less likely to rearrest married men and men who were older at the time of their first arrest.

Table 11 provides illustrative probabilities based on the multivariate logit model of the probability of recidivism based on the offender's behavior.

**Table 11: Probability of recidivism based on logistic model**

Age at first arrest	Alcohol/drug and age interaction	Married	Prior Violent crime	Final case disposition more severe	Probability of recidivism
19	Yes	No	Yes	Yes	0.99
25	Yes	Yes	No	No	0.57
19	No	Yes	No	No	0.38
46	No	Yes	No	No	0.13

Coefficients and Standard Errors. of Logit Model of the Probability of Recidivism.

Variable	Coeff.	StdErr	p	Variable name
1	2.9563	1.0239	0.0039	Court imposes a more severe final case disposition
2	-0.8609	0.2958	0.0036	Marital status
3	0.0478	0.0118	0.0001	Age at first arrest and an alcohol/drug arrest
4	-0.0507	0.0147	0.0006	Age at first arrest
5	0.6757	0.2853	0.0179	Violent crime

Odds Ratios and 95% Confidence Intervals of the Logit Model of the Probability of Recidivism.

Variable	O.R.	Low	High	Variable name
1	19.2269	2.5842	143.0485	Court imposes a more severe final case disposition
2	0.4228	0.2368	0.7550	Marital status
3	1.0490	1.0250	1.0736	Age at first arrest and an alcohol/drug arrest
4	0.9505	0.9234	0.9784	Age at first arrest
5	1.9655	1.1236	3.4383	Violent crime

Men who the police rearrest only for domestic violence crimes are different from men who the police arrest for a variety of crimes including domestic violence. A logit analysis finds that men who commit a variety of crimes are more likely to have a more severe final disposition of their case and have an arrest at an early age and a drug and alcohol arrest. Marriage, previous violent crime conviction, and the man's age at first arrest unrelated to substance abuse do not help to distinguish these two groups of criminals.

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Coefficients and Standard Errors for logit analysis of DV recidivists and recidivists who commit DV + other crimes

Variable	Coeff.	StdErr	p	Variable name
1	-1.6760	0.6247	0.0073	Court imposes a more severe final case disposition
2	-0.0312	0.0152	0.0398	Age at first arrest and an alcohol/drug arrest

Odds Ratios and 95% Confidence Intervals for logit analysis of DV recidivists and recidivists who commit DV + other crimes

Variable	O.R.	Low	High	Variable name
1	0.1871	0.0550	0.6367	Court imposes a more severe final case disposition
2	0.9693	0.9409	0.9986	Age at first arrest and an alcohol/drug arrest

TIME TO RE-ARREST

Table 12 illustrates part of the pattern of criminal behavior of this cohort of domestic violence offenders over time. Several features are prominent. The most striking is that this cohort of men engaged in a lot of criminal activity in the nine years following the offender’s index arrest in 1995-1996. Even after twelve arrests, police continued to arrest 23 members of the cohort. Police consistently rearrested more than 40 percent of the offenders for their next crime in less than six months.

Table 12: Distribution of Rearrest of the Offender Cohort by Time to Next Arrest

Time to next arrest in months	2d arrest	%	3d arrest	%	4 <sup>th</sup> arrest	%	5 <sup>th</sup> arrest	%	6 <sup>th</sup> arrest	%	7 <sup>th</sup> arrest	%	8 <sup>th</sup> arrest	%	9 <sup>th</sup> arrest	%	10 <sup>th</sup> arrest	%	11 <sup>th</sup> arrest	%	12 <sup>th</sup> arrest	%
< 1	30	12	17	09	21	14	13	11	14	15	10	13	9	16	9	19	4	11	6	19	2	09
1- <6	73	30	63	33	49	32	40	32	27	30	33	42	21	36	17	35	12	32	13	41	8	35
6 - <12	43	18	34	18	25	16	29	23	15	16	9	12	10	17	9	19	7	18	5	16	7	30
12 - <18	20	08	25	13	20	13	14	11	12	13	11	14	7	12	6	13	8	21	1	03	1	04
18 - 24	15	06	8	04	9	06	7	06	4	04	4	05	4	07	2	04	3	08	4	13	1	04
> 24	64	26	45	23	29	19	21	17	19	21	11	14	7	12	5	10	4	11	3	09	4	17
Rearrested	245	72	192	78	153	80	124	81	91	73	78	86	58	74	48	79	38	74	32	81	23	72
Not rearrested	97	28	53	22	39	20	29	19	33	27	13	14	20	26	10	21	10	26	6	19	9	28
Total cases	342		245		192		153		124		91		78		58		48		38		32	

A distinct pattern is that the courts operate at a quite different pace than the criminals. Approximately 50 percent of the men recidivated before their previous crime was disposed. As noted earlier, the time from the initial arraignment to the initial disposition averaged 259 days,

the median time was 196 days. This difference in pace presents the courts with a difficult problem of public safety management.

## NEW RESTRAINING ORDERS

One hundred thirty-five of the men had at least one restraining order taken out against them by an intimate partner or family member after their index arraignment.<sup>52</sup> As indicated by Table 14, a little more than a third of the men against whom the court issued a restraining order had more than one taken out against them subsequent to their index arrest.

### Exhibit 5: Multiple arrests

- **Offender 11**, The court arraigned Offender 11 in 1995 for assault and battery on his intimate partner. On that day, he pled guilty and the court sentenced him to a one year suspended sentence. Three months later, the police arrested him for another assault and battery. The court gave him a concurrent one-year suspended sentence, which the court revoked in 1996 and ordered him to a county correctional facility for a year. The police arrested him nine years later in 2004 for possession. The case is pending.
- **Offender 12**, The court arraigned this offender in 1995 for violating a restraining order against his intimate partner. He admitted that day. The court ordered him to five months in a county correctional facility, concurrent with a year sentence that another court imposed in 1995 for a prior assault and battery. The police arrested him nine years later in 2004 for assault and battery of a police officer. However, the defendant had not remained in the community during the interim. Prior to his incarceration for the study offense and the offense immediately preceding it, the court convicted him for armed assault in 1993 and sentenced him to 8-12 years in state prison concurrent with a twenty-year prison sentence imposed against him in 1988 for armed assault in a dwelling house and rape. During that incarceration, the court in 1994 charged him with assault and battery on a correctional officer. The court sentenced him in 1998 – after the study offense—to 2.5 years in prison. Consequently, although the defendant remained arrest free until 2004, he spent most of that time in state prison for prior offenses, including offense committed while in prison!<sup>53</sup>
- **Offender 13**, The court arraigned this offender in 1995 for threats and assault and batter with a dangerous weapon, a lit cigarette, against his intimate partner. The court dismissed the case, as he had no prior criminal history. The police arrested him once more in 1995, twice in 1996, four times in 1997, once in 1998, twice in 1999, and then not again until September 2003, more than three years later. Before that, the police arrested him in intervals between 7 and 331 days.

<sup>52</sup> After 1997, only restraining orders recorded in the District Court Clerk's Office were included.

<sup>53</sup> State criminal histories do not include data from parole so it is not known how much, if any, of the sentence was served under parole release.



**Exhibit: 6 Rearrests came quickly**

**Offender 14**, The police arrested Offender 14 for violating a restraining order; the court arraigned him in 1995 on that charge, trespassing, and assault with a knife against a girlfriend. With that case pending, the court arraigned him again in 1995 for threatening the same victim, violating the restraining order and assault with an unspecified dangerous weapon. Five days later with that case pending, the court arraigned him for trespassing and violating the order again. While all three charges were pending, the court arraigned him twice more the next month for threatening and assault and battery respectively. With all five charges pending, another court arraigned him the next month for operating a motor vehicle without a license. That same month, the District Court arraigned him for another restraining order violation. The next month the District Court disposed of the cases. The Court sentenced him to 24 months in a county correctional facility, six months committed, the balance suspended.

The following April the Court revoked the suspended sentence for a technical violation of probation and sentenced him to the remaining 18 months in the county correctional facility

The Court arraigned him again in 2002, for indecent assault on a child under 14 but the prosecutor did not pursue it. However, in 2002, the court arraigned him for another violation of a restraining order in Stoughton and he was eventually jailed again for 60 days in 2003. With that case pending before the court, the court arraigned him for violating a restraining order in Dedham the next month. The court disposed of that case the day before the Stoughton case and the Court sentenced him to six month suspended sentence. There have been no new court arraignments since his release from jail in 2003.

The same victim took out fifty-four percent of the restraining orders. Different female intimate partners requested forty-one percent of the orders; non-intimate family members took out four percent of the restraining orders. By the second subsequent order, the majority of filers were different victims from the initial study victims.

**Table 13: Breakdown of new restraining order by number of defendants**

<b>Restraining Orders</b>	<b>Number of Defendants</b>
One	87
Two	29
Three	15
Four	2
Five	1
Seven	1
Total	135

Victims filed twenty-eight percent of the subsequent restraining orders before the initial disposition of the index arrest and fifty-two percent of the victims took out orders before the final disposition of the index case. Clearly, the arrest did not make the victims feel safe from violence.

## VIOLATIONS OF RESTRAINING ORDERS

Table 14 indicates that a little more than one third of the new domestic violence arrests were for violations of restraining orders. Domestic violence arrests made up of a little more than a third of all new arrests.

Table 14: All, Domestic Violence, and Restraining Order Violation Arrests

At least (n) additional Arrests	Total additional arrests	Additional DV Arrests	Additional DV arrests that were RO arrests	Add'l DV arrests as percent of total add'l arrests	RO arrests as percent of add'l DV arrests
0	0	0	0	-na-	0
1	244	109	52	44.7	47.7
2	191	82	29	42.9	35.4
3	154	68	23	44.1	33.8
4	124	51	11	41.1	21.6
5	191	29	10	15.2	34.5
6	78	22	4	28.2	18.2
7	67	25	6	37.3	24.0
8	48	16	4	33.3	25.0
9	38	10	5	26.3	50.0
10	31	6	3	19.3	50.0
Total	1,166	418	147*	35.8	35.2

\*Police arrested twelve defendants for more than one restraining order violation.

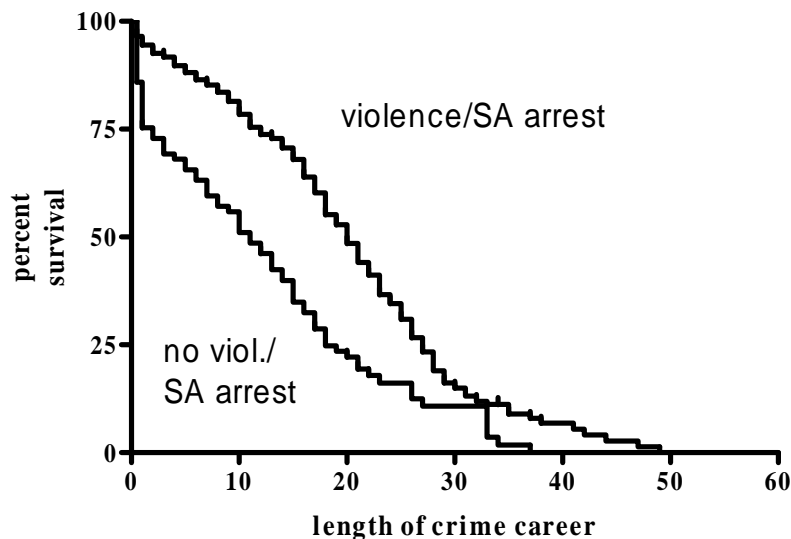
## DESISTANCE FROM CRIME

The study examined the length of the criminal careers of the men using Cox Proportional Hazard analysis and Kaplan-Meier survival analysis. In these analyses, the question is for how many years did the police continue to arrest these men. Some desisted before the study ended in 2004, others the police continued to arrest in 2004, the last year of the study. They gave no evidence of stopping their criminal activity.

The Cox proportional hazard model finds that men in the cohort, who the court convicted of an alcohol or drug crime or a violent crime, were less likely to desist by the end of the study. The hazard ratios of these two variables were 0.98 (p=.000) and 0.68 (p=.002) respectively. The older a man was at his first arrest the more likely he was to desist before the end of the study; the hazard ratio is 1.05 (p=0.00). Marital status was an insignificant variable, but marital status was not measured at each arrest.

Manifestly, if the court convicted a man for a violent crime or a substance abuse crime or both before the police arrest him for his index domestic assault, he is an unlikely candidate for rapid desistance. Specifically, in a Kaplan-Meier survival analysis, the analysis defined one group of criminals as those the court convicted of a violent crime, a substance abuse crime, or both. The second group of criminals the court did not convict of a violent crime, a substance abuse crime, or both. The hazard ratio of the two groups of criminals was 0.523; non-violent and non-substance abusing men arrested for domestic assault had a much greater likelihood of stopping their criminal activity and hence having shorter criminal careers than men arrested for violent, substance abusing crimes. Figure 2 maps the survival curve. The men who were not arrested for substance abuse or a violent crime had a median criminal career of 11 years; men arrested for substance abuse, a violent crime or both had a median criminal career length of 20 years. Only 6 percent of the men in this latter group were criminal for one year or less, while 25 percent of the men without prior arrests for violent crimes or substance abuse desisted within one year. These are large differences. Furthermore, the police arrested 75 percent of the men for prior violence or substance abuse crimes or both. It is notable that although the men not arrested for substance abuse or violent crimes had a shorter length of criminal career, their criminal activity continued for several years.

**Figure 2: Proportion of cohort continuing to be arrested after first arrest**



Men arrested for violent crimes, substance abuse or both had a median age of 18 at their first arrest;<sup>54</sup> 28 was the median age at first arrest for men charged with nonviolent crimes prior to their index domestic violence crime. Police stopped arresting less violent criminals at the median age of 34; they stopped arresting violent criminals at the median age of 39. This modest difference hides the large difference in the number of years of criminality of the two groups.

A second Kaplan-Meier survival analysis that started with the index arrests found analogous results. (See Figure 3, page 49.) Criminal activity, for men who did not have prior involvement with violence or substance abuse or both, largely stopped after their index arrest. The median length of time to desistance for this less violent group was 0.5 years; criminal activity for men involved in prior violence and substance abuse crimes or both stopped after a median time of 5 years. This is a large difference. One should be mindful, however, that the men who did not desist quickly after their index arrest continued to desist slowly over the next 9 years. The hazard ratio was 0.602 (p=0.000)

These analyses suggest that batterers divide into at least two groups: those with criminal careers fueled by substance abuse in a culture of violence and those men who were less involved in substance abuse and generally less violent. The men in the second group had significantly shorter criminal careers. Insofar as arrest records indicate, violence is not a continuing characteristic of their behavior. Neither is substance abuse. Fifty-nine percent of the men in the less violent group desisted after their index arrest and only 25 percent of the men in the violent-substance abusing group stopped their criminal activity after their index arrest.

Jeffrey Fagan, in his discussion of cessation from domestic violence, categorically states that batterers will not desist without court intervention.<sup>55</sup> Nancy Shields and Christine Hanneke in their study of batterers did not find anyone who desisted spontaneously. If these authors are correct, and this study provides evidence that they are, then a major proportion of batterers are persistent criminals. This study suggests that it may be reasonable to state an even stronger hypothesis than do Fagan, or Shields and Hanneke. Specifically, batterers will persist in their criminal activity especially if they are involved in violence and substance abuse, even though the police arrest them repeatedly. Those who are not so involved may respond positively. Although

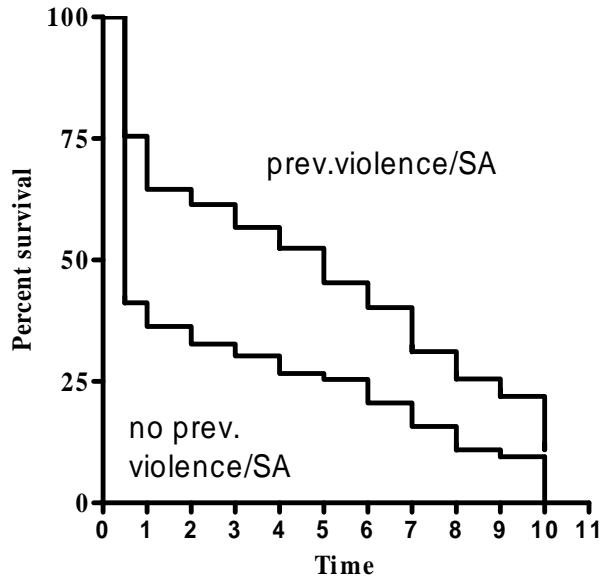
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<sup>54</sup>This median criminal career starting age is probably too high given that many of these men started as juveniles whose records are not accessible.

<sup>55</sup> Fagan, op. cit

this is not a study of desistance,<sup>56</sup> and it examines a single cohort of men arrested for domestic violence, the study provides evidence that a major proportion of arrested batterers are persistently violent, substance abusing criminals.

**Figure 3: Proportion of cohort continuing to be arrested 1995-2004 with and without previous violence or substance abuse**



There are several operational implications of these outcomes. First, police, prosecutors, and judges must reframe the crime of domestic assault. The judicial system should recognize domestic assault as a crime often perpetrated by persistently criminal men. The court can readily identify these men. Courts should pursue evidence-based prosecutions and aim for a high rate of prosecution. State legislatures should enact domestic violence felony enhancement legislation so that courts can better deal with the persistently violent. Local courts need to develop efficient mechanisms to enhance misdemeanor domestic assault cases to felony status. When men are persistent criminals, batterer intervention programs cannot expect to be successful. Probation, also, cannot expect to be successful. Substantial jail or prisons terms will increase public safety and provide an opportunity for these men to participate in intensive programs of habilitation.

<sup>56</sup> A criminal desistance study needs to include a richer data source than was available for this study. In addition, it needs to include persons who had criminal potential, but never exercised it. Specifically, the researcher needs to address the implicit selection problem. Not all persons who manifest criminal attributes become criminals.

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Federal, state, and county governments now support RSAT (Residential Substance Abuse Programs) programs. Corrections officials should include batterers in these programs, especially given that many are substance abusers. Opportunities for intensive habilitation are a necessary part of any incarceration; deterrence alone will not reduce recidivism. These habilitative efforts cannot operate successfully as community programs. Good RSAT-type programs are intensive efforts that engage the volunteering inmates 40 hours a week for six to nine months. Such programs are much more intensive than once a week, evening batterer programs. This means that jail sentences must be sufficiently long to allow the men to complete the program. Corrections officials should require program completion for participants prior to granting eligibility for parole. Finally, after release the corrections agencies should continue maintenance habilitative programs in the community.

## Chapter 6: Conclusions

The adjudication of domestic violence is a complex process involving court processes with many paths. The court is also part of a disjointed criminal justice system composed of multiple agencies each with their own budget and individual agency objectives. This chapter examines some of the complexities of the court process that the statistical analysis presented in the earlier chapters does not adequately capture. The men arrested for domestic violence in the study cohort were generally antisocial and persistently criminal. The police arrested seventy-five percent of these assaulting men for substance abuse crimes and violent crimes or both, including domestic violence. Their domestic abuse was part of their general criminal activity. *A priori* it is unlikely that that deterrence alone or deterrence combined with batterer treatment will remediate these men.

The men in the cohort commonly engaged in a new crime before the courts disposed of an earlier one. It was a coin toss as to whether these men would commit a new crime before the disposition of their previous case. The commission of a new crime before the disposition of the previous one had no discernible effect on the court's behavior and often worked to the advantage of the criminal insofar as the court disposed of the previous case or cases concurrently and the court's sentence remained unaffected; the criminal got one sentence for two (or more) crimes.

The statistical analysis provides a synoptic view of prosecution, initial and final judicial disposition of the crimes, and recidivism of the 342 men. The statistical analysis in the previous chapters finds that there is consistency in how the court responded to domestic violence criminal cases. The identifiable consistency of the court and its application of deterrence responses such as probation, suspended sentences, split sentences and jail, contrasts with the lengthy criminal records accumulated by many members of the cohort. Deterrence, while helping to contain criminal behavior is, by itself, an insufficient response

Although the analysis demonstrates considerable consistency, the case outcomes do not perfectly reflect the independent variables. The following discussion of the repeat patterns of crime and sentencing indicates that although the likelihood of an offender recidivating may be very high, the court, when the criminal does recidivate, often disposes of the case initially with a

suspended sentence or other probationary sentence, even though the estimated likelihood is greater than 50 percent that the court, in its final disposition, will order the offender to jail.

The analysis in the study indicates that there are distinct differences between criminals who are likely to recidivate and those who probably will not. The court, as discussed in the chapter on court processes, identifies these men and prosecutes domestic violence criminals who are likely to recidivate. If the Court has not ordered men to jail, the Court’s rehabilitative efforts to control domestic violence recidivism are generally limited to ordering men to batterer intervention programs. As a result, given the high likelihood of recidivism, the court exposes victims to excess levels of risk and it manages public safety less forcefully than it might.

Table 15 provides an illustration of this result. The Table examines the sentencing record of nine recidivists. The estimated probabilities, based on earlier logit estimates, are very high that these men would recidivate. The likelihood that jail is the final disposition is also generally over fifty percent, but the initial dispositions do not always reflect these expectations.

**Table 15: Sentences of Repeat Domestic Violence Offenders who were initially jailed for the index arrest**

Defendant	Estimated Rearrest Probability	Probability final disposition is jail	Initial recidivist sentences				
			1 <sup>st</sup> new domestic violence	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>
1	0.99	0.55	Dismissed				
2	0.89	0.57	Suspended	Suspended	Suspended		
3	0.89	0.57	Suspended	Split	Dismissed	Default	
4	0.70	0.25	Dismissed	Not Guilty			
5	0.77	0.56	Jail				
6	0.89	0.58	Jail	Suspended	Jail	Jail	Jail
7	0.83	0.45	Jail				
8	0.89	0.38	Suspended	Jail	Jail	Jail	Dis-missed
9	0.90	0.62	Suspended	Pending			

Importantly, the court, in time, sentenced most men in Table 15 who had initial suspended sentences to jail as the final disposition of their case. Table 15 does not include the non-domestic violence crimes for which the court sentenced the men to jail. For example, the court jailed defendant Number 5 several more times for non-domestic crimes.



Table 15 does not tell the entire story. Exhibit 7 provides additional context. Exhibit 7 illustrates that those consistently re-sentenced to jail did not necessarily receive lengthier sentences, the court often chose to allow the offender to serve concurrent sentences for multiple crimes, or was constrained in the administration of its deterrence of chronic criminal behavior by the 2.5-year limitation on misdemeanor sentences.

#### Exhibit 7: Sentencing of Chronic Abuser

**Offender 15,** The police first arrested this offender on drug and alcohol charges when he was 15 years old. The court incarcerated him for six months in 1985 for assault and battery with a dangerous weapon. The victim is unnamed. The court jailed him for two years in 1989 for receiving stolen property and breaking and entering. The court subsequently reduced the sentence to 22 months. The court sentenced him to a six-month incarceration in 1990 for assaulting a corrections officer. The court sentenced him for 2.5 years for his first domestic violence charges, violations of a restraining order, among other charges in 1990. The court jailed him for two months for another violation of a restraining order in 1991. The court again ordered him to jail in 1994 for one year for threats and assault and battery with a dangerous weapon. The victim is unnamed.

In 1995, the District Court issued a split sentence for three violations of a restraining order, 18 months, three months committed, and the remainder suspended. Police arrested him for another violation of the order in the district after his release. However, because he requested a jury trial, the court did not sentence him to 18 months incarceration until 1996. In the interim, police arrested him for an assault and battery and restraining order violation in Brockton. The court issued a suspended sentence of one year in 1996.

Police arrested him for a non-domestic offense four months later in Brockton for operating a car negligently, malicious destruction of property, a motor vehicle that he knew was stolen and resisting arrest. The court ordered him to jail for two years in 1997.

Two years later the court issued a suspended sentence for operating with a suspended license, but the court committed him to another year in jail the following year for assault with a dangerous weapon, a motor vehicle. Police then charged him in 2002 for a subsequent domestic violence offense, multiple counts of violating a restraining order, breaking and entering in the nighttime with intent to commit a felony, threats, intimidation of a witness, and assault and battery. The Brockton Court sentenced him to 2.5 years. With that case pending, police arrested him in Hingham two months later for two more restraining order violations. The court issued a six-month sentence; however, it was concurrent with the sentence imposed in Brockton for the immediate prior domestic violence offense.

On the day the court sentenced him on the Brockton domestic violence case to 2.5 years, the Brockton Court arraigned him for threats to murder and three more restraining order violations. The court incarcerated him for these, his fifth new domestic violence charge following the index study domestic violence charge. These he served concurrently with the prior charges.

As in Exhibit 7, although the court sentenced the defendant to incarceration for four of his five new domestic violence offenses committed following his first incarceration for the index domestic violence charge, three of the sentences were concurrent, implicitly giving him two

sanction-free crimes of domestic violence. Specifically, the defendant received a year sentence for his index domestic violence, assault and battery with a beer bottle, assault and battery, and two restraining order violations. The offender served these sentences concurrently with those imposed on another domestic violence case of threats, and two counts of assault and battery that arose two months earlier. Prosecutors and judges seem reluctant to “pile” one sentence on top of another even though the sentences are for different offenses.

Although in Exhibit 7 the defendant’s last sentence imposed was 2.5 years, the maximum misdemeanor sentence allowed in Massachusetts, that sentence represented only six more months incarcerated than first sentence imposed against him thirteen years earlier for a non-domestic offense. In addition, he received the same sentence for his first known domestic violence offense in 1990.

Jail sentences are unlikely to deter persistently assaulting criminals. State legislatures can respond to this problem by passing a domestic violence felony enhancement law, in which repeated convictions for domestic violence elevates subsequent domestic violence offenses to a felony and enables the State to extend the period of incarceration.

On the other hand, the court was not likely to decide on increased punishment when the time between arrests increased. It appears that the prosecutors and judges assume that the length between arrests indicates good behavior as opposed to unacknowledged crime.<sup>57</sup> It is common to find gaps of one or more years between domestic violence offenses. This, of course, does not mean the abuser in the interim desisted from abuse. It may be a testament to the reluctance of women to use and reuse police services, or dissatisfaction with the ability of the courts to provide victim safety or other needed services engendered by abuse. On the other hand, it may also mean that even months of desistance does not guarantee future cessation of abuse.

The research makes clear the general criminal behavior of most arrested abusers. In order to understand the nature and extent of criminal justice and other interventions for domestic violence, it is necessary to study these activities within the broader context of an abuser’s general criminal behavior. Ignoring the context of a man’s general criminality, the jailing of a specific abuser for several months may appear to represent a severe sentence. That sentence may be

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<sup>57</sup> Research suggests, however, victims do not report many abuse incidents to the police and only a minority of them result in court prosecutions National Crime Victim Survey

lenient, however, given that the court previously sentenced the same man to many years in prison for a prior, non-intimate assault. The research found the court's guarded response to repeat domestic violence offenses was a likely source of increased variance in the case outcomes, and added to the problem of victim safety.

This longitudinal study illustrates the limits of a model court on domestic violence. The Ford Foundation awarded the Court's domestic violence program a \$100,000 Innovations in American Government Award in 1992. The study outcomes reflect importantly the vigor of the model court. Unlike the prosecution behavior in many courts, the prosecutors strongly pursued domestic violence cases including pursuit of cases in which the victim did not wish to testify or recanted. Courts in other jurisdictions may not be as positively consistent in terms of the Court's pattern of prosecution, conviction, and sentencing.

In addition, there are other contextual differences. Restraining orders in Massachusetts are separate civil actions rather than criminal orders issued at arraignment. Massachusetts law allows the courts to sentence a defendant to 2.5 years in a county correctional facility, which is longer than in most other states. The State has neither a domestic violence felony enhancement statute, nor a specific domestic violence statute.

At the end of the previous chapter, the study discussed the need for courts to increase the number of men incarcerated for sufficient periods that they have an opportunity for extended habilitation within the jail or prison system. In turn, correctional systems need to expand intensive habilitative programs available to inmates. Courts and correctional systems should support the inclusion of these men in strong post-release reentry programs. Because effective habilitative programs are intensive, community programs are not likely to be effective without a period of habilitation in a secure facility. Given the lengthy criminal careers of these men and the costs they impose on the criminal justice system, the community, and individuals such a "new model" approach may provide measurable net benefits.

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